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PARAS.

PART I.

INCOME-TAX ACT, 1922 (XI OF 1922).

ACT No. XI OF 1922, AS SUBSEQUENTLY AMENDED.

An Act to consolidate and amend the law relating to Income-tax and Super-tax.

WHEREAS it is expedient to consolidate and amend the law relating to Income-tax and Super-tax, It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Indian Income-tax Act, 1922.

(*2*) It extends to the whole of British India, including **P. 1.** British Baluchistan and the Sonthal Parganas, and applies also, within the dominions of Princes and Chiefs in India in alliance with His Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor General in Council in that behalf, and to all other servants of His Majesty in those dominions.

(*3*) It shall come into force on the first day of April, 1922.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "agricultural income" means— **P. 2.**

(*a*) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in British India or subject to a local rate assessed and collected by officers of Government as such;

(*b*) any income derived from such land by—

(*i*) agriculture, or

(*ii*) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(*iii*) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been

performed other than a process of the nature described in sub-clause *(ii)*;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses *(ii)* and *(iii)* of clause *(b)* is carried on:

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling-house, or as a store-house, or other out-building;

(2) "assessee" means a person by whom Income-tax is payable;

(3) "Assistant Commissioner" means a person appointed to be an Assistant Commissioner of Income-tax under section 5;

(4) "business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of *trade, commerce or manufacture;*

**(4A)* "The Central Board of Revenue" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924;

(5) "Commissioner" means a person appointed to be a Commissioner of Income-tax under section 5.

P. 4. *(6)* "company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession, and includes any foreign association carrying on business in British India whether incorporated or not, and whether its principal place of business is situated in British India or not, which the †*Central Board of Revenue* may, by general or special order, declare to be a company for the purposes of this Act; VII of 1913.

* This clause was inserted by the Central Board of Revenue Act, 1924 (IV of 1924).

† Amended by the Central Board of Revenue Act, 1924 (IV of 1924).

*(*6A*) " firm ", " partner " and " partnership " have the same meanings respectively as in the Indian Contract Act, 1872; and

2. (*7*) " Income-tax Officer " means a person appointed to be an Income-tax Officer under section 5.

Presidency Magistrate or or a Magistrate of the by the Local Government to try offences against this Act,

(*9*) " person " includes a Hindu undivided family;

(*10*) " prescribed " means prescribed by rules made under this Act,

(*11*) " Previous year " means— P. 6.

(*a*) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up·

Provided that, if this option has once been exercised by the assessee, it shall not again be exercised so as to vary the meaning of the expression " previous year " as then applicable to such assessee except with the consent of the Income-tax Officer and upon such conditions as he may think fit; or

(*b*) in the case of any person, business or company, or class of person, business or company, such period as may be determined by the Central Board of Revenue or by such authority as the Board may authorise in this behalf

(*12*) " principal officer," used with reference to a local authority or a company or any other public body or *any*† association, means— P. 7, 8

(*a*) the secretary, treasurer, manager or agent of the authority, company, body or association, or

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* Inserted by the Income-tax (Amendment) Act, 1930 (XXI of 1930).
† Amended by the Income-tax (Amendment) Act, 1924 (XI of 1924)

(*b*) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof;

P. 9. (*13*) " public servant " has the same meaning as in the Indian Penal Code;

P. 10. R. 2-6. (*14*) *' registered firm ' means a firm registered under the provisions of section 26A;

P. 11. (*15*) " total income " means total amount of income, profits and gains from all sources to which this Act applies computed in the manner laid down in section 16; and

P. 10. (*16*) " unregistered firm " means a firm which is not a registered firm.

CHAPTER I.

CHARGE OF INCOME-TAX.

P. 2, 6, 11, 12, 13, 14, 15. 3. Where any Act of the Indian Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at the rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of all income, profits and gains of the previous year of every †*individual, Hindu undivided family, company, firm and other association of individuals.*‡

Charge of income-tax.

P. 13, 15, 16. 4. (*1*) Save as hereinafter provided, this Act shall apply to all income, profits or gains, as described or comprised in section 6, from whatever source derived, accruing or arising, or received in British India or deemed under the provisions of

Application of Act.

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* Amended by the Income-tax (Amendment) Act, 1930 (XXI of 1930).

† Amended by the Income-tax (Amendment) Act, 1924 (XI of 1924).

‡ NOTE.—The amendments made in Sections 3, 55 and 56 of the Act by the Indian Income-tax (Amendment) Act, 1924 (XI of 1924) shall have effect as if they had been made on the first day of April 1923, and income-tax and super-tax shall be deemed to have been chargeable for the year commencing on that date and to be chargeable for the year commencing on the first day of April, 1924, at the rate or rates applicable for those years to the total income of an individual, in respect of the income, profits and gains and of the total income, respectively, of every Association of individuals for which no rate of tax has been otherwise laid down by law.

this Act to accrue, or arise, or to be received in British India.

(2) Profits and gains of a business accruing or arising without British India to a person resident in British India* *shall, if they are received in or brought into British India, be deemed to have accrued or arisen in British India and to be profits and gains of the year in which they are so received or brought*, notwithstanding the fact that they did not so accrue or arise in that year, provided that they are so received or brought in within three years of the end of the year in which they accrued or arose. P.

Explanation.—Profits or gains accruing or arising without British India shall not be deemed to be received or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in the balance sheet prepared in British India.

(3) This Act shall not apply to the following classes of income:— P.

(i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto P.

(ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes. P.

(iii) The income of local authorities.

(iv) Interest on securities which are held by, or are the property of, any Provident Fund to which IX of 1897. the Provident Funds Act, 1897, applies,† * * * P.

(v) Any capital sum received in commutation of the whole or a portion of a pension, or in the nature of consolidated compensation for death or injuries, or in payment of any insurance policy, P.

* Amended by the Income-tax (Further Amendment) Act, 1923 (XXVII of 1923).

† Repealed by the Income-tax (Amendment) Act, 1924 (XI of 1924)

or as the accumulated balance at the credit of a subscriber to any such Provident Fund.

P. 22. (vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.

P. 23. (vii) Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employé.

P. 2. (viii) Agricultural income.

P. 20-A. *(ix) Any income received by trustees on behalf of a recognised provident fund as defined in clause (a) of section 58-A.

In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

CHAPTER II.

INCOME-TAX AUTHORITIES.

P. 24. Income-tax authorities. 5. (1) There shall be the following classes of Income-tax authorities for the purposes of this Act, namely:—

(a) the Central Board of Revenue,

(b) Commissioners of Income-tax,

(c) Assistant Commissioners of Income-tax, and

(d) Income-tax Officers.

†* * * * * *

‡(3) There shall be a Commissioner of Income-tax for each province who shall be appointed by the Governor General in Council.

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* Inserted by the Income-tax (Provident Funds Relief) Act, 1929 (XII of 1929).

† Repealed by the Central Board of Revenue Act, 1924 (IV of 1924).

‡ Amended by the Income-tax (Amendment) Act, 1928 (XVI of 1928).

(4) ... -tax and Income-tax Off ... of the Governor Genera ... Commissioner of Income-tax by order in writing They shall perform their functions in respect of such classes of persons and such classes of income and in respect of such areas as the Commissioner of Income-tax may direct. The Commissioner may, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Assistant Commissioner and the Commissioner, respectively, and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Assistant Commissioner shall be deemed to be references to the Assistant Commissioner and the Commissioner respectively

(5) The Central Board of Revenue may, by notification in the Gazette of India, appoint Commissioners of Income-tax, Assistant Commissioners of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income, and for such area, as may be specified in the notification, and thereupon the functions so specified shall cease, within the specified area, to be performed, in respect of the specified classes of persons or classes of income, by the authorities appointed under sub-sections (3) and (4).

(6) Assistant Commissioners of Income-tax and Income-tax Officers appointed under sub-section (4) shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax appointed under sub-section (3) for the province in which they perform their functions

CHAPTER III.

TAXABLE INCOME.

Heads of income chargeable to income-tax

6. Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income-tax in the manner hereinafter appearing, namely:— P. 13.

(i) Salaries.

(*ii*) Interest on securities.

(*iii*) Property.

(*iv*) Business.

(*v*) Professional earnings.

(*vi*) Other sources.

P. 22, 23, 25. 7. (*1*) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits received by him in lieu of, or in addition to, any salary or wages, which are paid by or on behalf of Government, a local authority, a company, or any other public body or association, or by or on behalf of any private employer:

Salaries.

**Explanation.*—The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub-section:

P. 11, 56. Provided that the tax shall not be payable in respect of any sum deducted under the authority of Government from the salary of any individual for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary.

P. 1, 15, 26. (*2*) Any income which would be chargeable under this head if paid in British India shall be deemed to be so chargeable if paid to a British subject or any servant of His Majesty in any part of India by Government or by a local authority established by the Governor General in Council.

P. 16, 28. 8. The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Government of India or of a Local Government, or on debentures or other securities for money issued by or on behalf of a local authority or a company:

Interest on securities.

P. 11. Provided that no income-tax shall be payable on the interest receivable on any security of the Government of India issued or declared to be income-tax free:

* Inserted by the Income-tax (Amendment) Act, 1923 (XV of 1923).

Provided, further, that the income-tax payable on the interest receivable on any security of a Local Government issued income-tax free shall be payable by that Local Government.

Property

9. (*1*) The tax shall be payable by an assessee under **P. 29,**
the head "Property" in respect of the **32.**
bonâ fide annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of his business, subject to the following allowances, namely:

(*i*) where the property is in the occupation of the **P. 31**
owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value,

(*ii*) where the property is in the occupation of a **P. 32**
tenant who has undertaken to bear the cost of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one-sixth of such value,

(*iii*) the amount of any annual premium paid to in- **P. 33**
sure the property against risk of damage or destruction;

(*iv*) where the property is subject to a mortgage or charge or to a ground rent, the amount of any interest on such mortgage or charge or of any such ground rent;

(*v*) any sums paid on account of land-revenue in **P. 5**
respect of the property;

(*vi*) in respect of collection charges, a sum not ex- **P. 3**
ceeding the prescribed maximum, **R. 7**

(*vii*) in respect of vacancies, such sum as the Income- **P. 3**
tax Officer may determine having regard to the **35**
circumstances of the case

Provided that the aggregate of the allowances made **P. 3**
under this sub-section shall in no case exceed the annual value.

(*2*) For the purposes of this section, the expression **P. 3**
"annual value" shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year:

P. 30. Provided that, where the property is in the occupation of the owner for the purposes of his own residence, such sum shall, for the purposes of this section, be deemed not to exceed ten per cent. of the total income of the owner.

P. 37, 39, 51. **10.** (*1*) The tax shall be payable by an assessee under the head "Business" in respect of the profits or gains of any business carried on by him.

Business.

P. 37, 40, 41. (*2*) Such profits or gains shall be computed after making the following allowances, namely:—

P. 42. (*i*) any rent paid for the premises in which such business is carried on provided that when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional part so used;

P. 43. (*ii*) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed,

P. 44. (*iii*) in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is not in any way dependent on the earning of profits, the amount of the interest paid:

Explanation.—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;

P. 45. (*iv*) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, the amount of any premium paid;

(v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof; **P. 43.**

(vi) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed: **P. 46.** **R. 8-9**

Provided that—

(a) the prescribed particulars have been duly furnished;

(b) where full effect cannot be given to any such allowance in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or, if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years, and

(c) the aggregate of all such allowances made under this Act or any Act repealed hereby, or under *the Indian Income-tax Act 1886, shall, in no* case, exceed the original cost to the assessee of the buildings, machinery, plant, or furniture, as the case may be; [..] of [..]86

(vii) in respect of any machinery or plant which, in consequence of its having become obsolete, has been sold or discarded, the difference between the original cost to the assessee of the machinery or plant as reduced by the aggregate of the allowances made in respect of depreciation under clause (vi), or any Act repealed hereby, or the Indian Income-tax Act, 1886, and the amount for which the machinery or plant is actually sold, or its scrap value; **P. 47.** [..] of [..]86.

P. 47-A. *(*viia*) in respect of animals which have been used for the purposes of the business otherwise than as stock in trade and have died or become permanently useless for such purposes, the difference between the original cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals;

P. 48, 53. (*viii*) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business;

P. 48-A. †(*viiia*) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission:

Provided that the amount of the bonus or commission is of a reasonable amount with reference to—

(*a*) the pay of the employee and the conditions of his service;

(*b*) the profits of the business for the year in question; and

(*c*) the general practice in similar businesses;

P. 40, 49, 51. (*ix*) any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains:

‡Provided that nothing in clause (*viii*) or clause (*ix*) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or assessed at a proportion of or otherwise on the basis of any such profits or gains.

P. 37. (*3*) In sub-section (*2*), the word "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section.

P. 37. **11.** (*1*) The tax shall be payable by an assessee under the head "Professional earnings" in respect of the profits or gains of any profession or vocation followed by him.

Professional earnings.

* Inserted by the Income-tax (Amendment) Act, 1928 (III of 1928).

† Inserted by the Indian Income-tax (Third Amendment) Act, 1930 (XXIII of 1930).

‡ Inserted by the Income-tax (Amendment) Act, 1928 (III of 1928).

(2) Such profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purposes of such profession or vocation, provided that no allowance shall be made on account of any personal expenses of the assessee. P. 51-53.

(3) Professional fees paid in any part of India to a person ordinarily resident in British India shall be deemed to be profits or gains chargeable under this head. P. 15.

Other sources.

12. (1) The tax shall be payable by an assessee under the head "Other sources" in respect of income, profits and gains of every kind and from every source to which this Act applies (if not included under any of the preceding heads). P. 29.

(2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee. P. 52.

Method of accounting

13. Income, profits and gains shall be computed, for the purposes of sections 10, 11 and 12, in accordance with the method of accounting regularly employed by the assessee: P. 37, 50.

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

Exemptions of a general nature

14. (1) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family. P. 11,

(2) The tax shall not be payable by an assessee in respect of—

(a) any sum which he receives by way of dividends as a shareholder in a company where the profits or gains of the company have been assessed to income-tax; or

(b) such an amount of the profits or gains of any firm which have been assessed to income-tax as is P. 10,

proportionate to his share in the firm **at the time of such assessment*; or

P. 55A. †(*c*) any sum which he receives as his share of the profits or gains of an association of individuals, other than a Hindu undivided family, company or firm, where such profits or gains have been assessed to income-tax.

P. 11, 56. Exemption in the case of life insurances.

15. (*1*) The tax shall not be payable by an assessee in respect of any sums paid by him to effect an insurance on his own life or on the life of his wife, or in respect of a contract for a deferred annuity on his own life or on the life of his wife, or as a contribution to any Provident Fund to which the Provident Funds Act, 1897, applies. IX of 1897.

[1]* * * * * *

(*2*) Where the assessee is a Hindu undivided family, there shall be exempted under sub-section (*1*) any sums paid to effect an insurance on the life of any male member of the family or of the wife of any such member.

P. 11. P. 20-A. (*3*) The aggregate of any sums exempted under this section shall not, together with any sums exempted under the proviso to sub-section (*1*) of section 7, ‡*and any sums exempted under sub-section* (*1*) *of section 58-F* exceed one-sixth of the total income of the assessee.

. 11. Exemptions and exclusions in determining the total income.

16. (*1*) In computing the total income of an assessee sums exempted under the proviso to sub-section (*1*) of section 7, the provisos to section 8, sub-section (*2*) of section 14 and section 15, shall be included.

P. 57, 63. (*2*) For the purposes of sub-section (*1*), any sum mentioned in clause (*a*) of sub-section (*2*) of section 14 shall be increased by the amount of income-tax payable by the company in respect of the dividend received.

P. 11, 58. Reduction of tax when margin above a certain limit is small.

17. Where owing to the fact that the total income of any assessee has reached or exceeded a certain limit he is liable to pay income-tax or to pay income-tax at a higher rate, the amount of income-tax payable by him shall, where

* Inserted by the Income-tax (Amendment) Act, 1928 (III of 1928).
† Inserted by the Income-tax (Amendment) Act, 1930 (XXII of 1930).
[1] Repealed by the Income-tax (Amendment) Act, 1924 (XI of 1924).
‡ Inserted by the Income-tax (Provident Funds Relief) Act, 1929 (XII of 1929).

necessary, be reduced so as not to exceed the aggregate of the following amounts, namely —

(a) the amount which would have been payable if his total income had been a sum less by one rupee than that limit, and

(b) the amount by which his total income exceeds that sum.

CHAPTER IV.

DEDUCTIONS AND ASSESSMENT.

Payment by deduction at source.

18. (1) Income-tax shall, unless otherwise prescribed in the case of any security of the Government of India, be leviable in advance by deduction at the time of payment in respect of income chargeable under the following heads:— P. 59

(i) " Salaries "; and

(ii) " Interest on securities."

(2) Any person responsible for paying any income chargeable under the head " Salaries " shall, at the time of payment, deduct income-tax on the amount payable at the rate applicable to the estimated income of the assessee under this head: P. 25 60

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct.

*(2a) Notwithstanding anything hereinbefore contained, for the purpose of making the deduction under sub-section (2), there shall be included in the amount payable any income chargeable under the head ' Salaries ' which is payable to the assessee out of India by or on behalf of Government, and the value in rupees of such income shall be calculated at the prescribed rate of exchange. R. 11 P. 59

(3) The person responsible for paying any income chargeable under the head " Interest on securities " shall, at the time of payment, deduct income-tax on the amount of the interest payable at the maximum rate P. 23, 61.

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* Inserted by the Income-tax (Second Amendment) Act, 1925 (XVI of 1925).

P. 57. (4) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received.

P. 59. (5) Any deduction made in accordance with the provisions of this section shall be treated as a payment of income-tax on behalf of the person from whose income the deduction was made, or of the owner of the security, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act:

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund.

(6) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed time by the person making the deduction to the credit of the Government of India, or as the Central Board of
R. 10-12. Revenue directs.

P. 59. (7) If any such person does not deduct and pay the tax as required by this section, he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

P. 61, 92. (9) Every person deducting income-tax in accordance with the provisions of sub-section (3) shall, at the time of payment of interest, furnish to the person to whom the
R. 13. interest is paid a certificate to the effect that income-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed.

P. 59. **19.** In the case of income chargeable under any other heads than those mentioned in sub-section (1) of section 18, and in any case where income-tax has not been deducted in accordance with the provisions of that section, the tax shall be payable by the assessee direct.

Payment in other cases.

R. 42, 43.
P. 8. *__19-A.__ The principal officer of every company shall, on or before the 15th day of June in each year, furnish to the prescribed officer a return in the prescribed form and veri-

Supply of information regarding dividends.

* Inserted by the Income-tax (Amendment) Act, 1926 (XXIV of 1926).

fied in the prescribed manner of the names and of the addresses, as entered in the register of shareholders maintained by the company, of the shareholders to whom a

20. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed P. 63, 92. R. 14.

Certificate by company to shareholders receiving dividends.

21. The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and, within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form, a return in writing showing— R. 15. P. 8, 64. R. 17.

Annual return

(a) the name and, so far as it is known, the address, of every person who was receiving on the said 31st day of March, or has received during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed; R. 16.

(b) the amount of the income so received by each such person, and the time or times at which the same was paid;

(c) the amount deducted in respect of income-tax from the income of each such person

22. (1) The Principal officer of every company shall prepare, and, on or before the fifteenth day of June in each year, furnish to the Income-tax Officer a return, in the prescribed form and verified in the prescribed manner, of the total income of the company during the previous year · P. 11, 65, 67, 68. R. 18.

Return of income.

Provided that the Income-tax Officer may, in his discretion, extend the date for the delivery of the return in the case of any company or class of companies.

11, 66, 67. (*2*) In the case of any person other than a company whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer shall serve a notice upon him requiring him to furnish, within such period, not being less than thirty days as may be specified in the notice, a return
19. in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income during the previous year.

67. (*3*) If any person has not furnished a return within the time allowed by or under sub-section (*1*) or sub-section (*2*), or having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made, and any return so made shall be deemed to be a return made in due time under this section.

69, 87. (*4*) The Income-tax Officer may serve on the principal officer of any company or on any person upon whom a notice has been served under sub-section (*2*) a notice requiring him, on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require:

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

11, 76, 91. Assessment. **23.** (*1*) If the Income-tax Officer is satisfied that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return.

70, 71. (*2*) If the Income-tax Officer has reason to believe that a return made under section 22 is incorrect or incomplete he shall serve on the person who made the return a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

(3) On the day specified in the notice issued under sub- P. 11.
section (2), *or as soon afterwards as may be*, the Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require, on specified points, shall, by an order in writing assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.

(4) If the principal officer of any company or any other P. 69, 70.
person fails to make a return under sub-section (1) or sub-section (2) of section 22, as the case may be, or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment **and, in the case of a registered firm, may cancel its registration.*

* Provided that the registration of a firm shall not be cancelled until fourteen days have elapsed from the issue of a notice by the Income-tax Officer to the firm intimating his intention to cancel its registration.

Power to assess individual members of certain firms, associations and companies.

**23-A.* (1) Where the Income-tax Officer is satis- P. 55A.
fied that any firm or other association of individuals carrying on any business, other than a Hindu undivided family or a company, is under the control of one member thereof, ar
formed or is being
ing the liability t
with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income-tax by the firm or association shall not be determined, and thereupon the share of each member in the profits and gains of the firm or association shall be included in his total income for the purpose of his assessment thereon.

Explanation.—A member of a firm or association who owns the whole or the major portion of the capital of the firm or association shall not by reason only of that fact be deemed to control the firm or association.

(2) Where the Income-tax Officer is satisfied that a company is under the control of not more than five of its

* Inserted by the Income-tax (Amendment) Act, 1930 (XXI of 1930).

members and that its profits and gains are allowed to accumulate beyond its reasonable needs, existing and contingent, having regard to the maintenance and development of its business, without being distributed to the members, or that a reasonable part of its profits and gains. having regard to the said needs, has not been distributed to its members in such manner as to render the amount distributed liable to be included in their total income, and that such accumulation or failure to distribute is for the purpose of preventing the imposition of tax upon any of the members in respect of their shares in the profits and gains so accumulated or not distributed, the Income-tax Officer may, with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income-tax by the company shall not be determined, and thereupon the proportionate share of each member in the profits and gains of the company, whether such profits and gains have been distributed to the members or not, shall be included in the total income of such member for the purpose of his assessment thereon :

Provided that this sub-section shall not apply to any company which is a subsidiary company or in which the public are substantially interested.

Explanation.—For the purpose of this sub-section,—

(*a*) a company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of this sub-section apply or of two or more companies none of which is a company to which those provisions apply;

(*b*) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply)

and if any such shares have in the course of such previous year been the subject of dealings any stock exchange in British India or are in fact freely transferable by the holders to other members of the public;

(c) unless the contrary is proved, a company shall be deemed to be under the control of any persons where the majority of the voting power or shares is in the hands of those persons or of relatives or nominees of those persons;

(d) " nominee " means a person who may be required to exercise his voting power on the directions of, or holds shares directly or indirectly on behalf of, another person

(3) The Assistant Commissioner shall not give his approval to any order proposed to be passed by the Income-tax Officer under this section until he has given the firm, association or company concerned an opportunity of being heard.

(4) (i) Where any member of a firm or association of individuals makes default in the payment of tax on his share of profits and gains which has been included in his total income under the provisions of sub-section (1), such tax may be recovered from the firm or association, as the case may be. P. 91.

(ii) Where the proportionate share of any member of a company in the undistributed profits and gains of the company has been included in his total income under the provisions of sub-section (2), the tax payable in respect thereof shall be recoverable from the company and may be recovered from such member, if there are not sufficient funds in the hands of the company to pay the tax, or if the winding up of the company has commenced.

(iii) Where tax is recoverable from a company, firm or other association under this sub-section, a notice of demand shall be served upon it in the prescribed form showing the sum so payable, and such company, firm or association shall be deemed to be the assessee in respect of such sum, for the purposes of Chapter VI.

(5) Where tax has been paid in respect of any undistributed profits and gains of a company under this section, and

such profits and gains are subsequently distributed in any year, the proportionate share therein of any member of the company shall be excluded in computing his total income of that year.

P. 36, 72. **24.** (*1*) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set-off against his income, profits or gains under any other head in that year.

Set-off of loss in computing aggregate income.

(*2*) Where the assessee is a registered firm, and the loss sustained cannot wholly be set-off under sub-section (*1*), any member of such firm shall be entitled to have set-off against any income, profits or gains of the year in which the loss was sustained in respect of which the tax is payable by him such amount of the loss not already set-off as is proportionate to his share in the firm.

P. 14, 74. **25.** (*1*) Where any business, profession or vocation [1]*on which income-tax was not at any time charged under the provisions of the Indian Income-tax Act, 1918,* is discontinued in any year, an assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

Assessment in case of discontinued business.

P. 74. (*2*) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business, profession or vocation up to the date of its discontinuance.

P. 14, 74. (*3*) Where any business, profession or vocation [2]* * * on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued no tax shall be payable in respect of the income, profits and VI of 1918.

[1] Amended by the Income-tax (Amendment) Act, 1924 (XI of 1924).
[2] Repealed by the Income-tax (Amendment) Act, 1924 (XI of 1924).

gains of the period between the end of the previous year and the date of such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

(*4*) Where an assessment is to be made under sub-section (*1*) or sub-section (*3*), the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (*2*) of section 22, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

Assessment after partition of * Hindu undivided family

*** 25-A.** (*1*) Where, at the time of making an assessment under section 23, it is claimed by or on behalf of any member of a Hindu family hitherto †*assessed* as undivided that a partition has taken place among the members of such family, the Income-tax Officer shall make such inquiry thereinto as he may think fit, and if he is satisfied that a separation of the members of the family has taken place and that the joint family property has been partitioned among the various members or groups of members in definite portions† he shall record an order to that effect: **P. 54.**

Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.

(*2*) Where such an order has been passed, the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such, as if

* Inserted by the Income-tax (Amendment) Act, 1928 (III of 1928)
† Inserted by the Income-tax (Second Amendment) Act, 1930 (XXII of 1930)

no separation or partition had taken place, and each member or group of members shall in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (*1*) of section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it;

and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 23:

Provided that all the separated members and groups of members shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family as such.

* (*3*) Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family.

P. 75. † **26.** (*1*) Where, at the time of making an assessment under section 23, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessments on the firm and on the members thereof shall, subject to the provisions of this Act, be made as if the firm had been constituted throughout the previous year as it is constituted at the time of making the assessment, and as if each member had received a share of the profits of that year proportionate to his interest in the firm at the time of making the assessment.

Change in constitution of a firm.

P. 75-A. (*2*) Where at the time of making an assessment under section 23, it is found that the person carrying on any business, profession or vocation has been succeeded in such capacity by another person, the assessment shall be made on such person succeeding, as if he had been carrying on the business, profession or vocation throughout the previous year, and as if he had received the whole of the profits for that year.

Change of ownership of business.

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* Inserted by the Indian Income-tax (Second Amendment) Act, 1930 (XXII of 1930).

† *Substituted for the original section by the* Income-tax (Amendment) Act, 1928 (III of 1928).

* 26-A. (1) Application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax. P. 10.

Procedure in registration of firms.

(2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed; and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed. P. 68. R. 2—6.

27. Where an assessee or, in the case of a company, the principal officer thereof, within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 22, or that he did not receive the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last-mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 23. P. 67.

Cancellation of assessment when cause is shown

† 28. (1) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that an assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount, he may direct that the assessee shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of the income-tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income. P. 67, 68.

Penalty for concealment of income or improper distribution of profits.

(2) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceed-

* Inserted by the Indian Income-tax (Amendment) Act, 1930 (XXI of 1930)

† Substituted for the original section by the Indian Income-tax (Amendment) Act, 1930 (XXI of 1930)

ings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under this Act governing such distribution, and that any partner has thereby returned his income below its real amount, he may direct that such partner shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of income-tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

(*3*) No order shall be made under sub-section (*1*) or sub-section (*2*), unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.

(*4*) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(*5*) An Assistant Commissioner or a Commissioner, who has made an order under sub-section (*1*) or sub-section (*2*), shall forthwith send a copy of the same to the Income-tax Officer.

P. 77. **29.** When the Income-tax Officer has determined a sum to be payable by an assessee under section 23, or when an order has been passed under sub-section (*2*) of section 25 or section 28 for the payment of a penalty, the Income-tax Officer shall serve on

Notice of demand.

R. 20. the assessee a notice of demand in the prescribed form specifying the sum so payable.

P. 38, 67, 69, 78, 106-A. **30.** (*1*) Any assessee objecting to the amount or rate at which he is assessed under section 23 or section 27, or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax Officer to make a fresh assessment under section 27, or to any order against him under sub-section (*2*) of section 25* *or section 25-A* or section 28, made by an Income-tax Officer, may appeal to the Assistant

Appeal against assessment under this Act.

* Inserted by the Indian Income-tax (Amendment) Act, 1930 (XXII of 1930).

Commissioner against the assessment or against such refusal or order:

Provided that no appeal shall lie in respect of an assessment made under sub-section (4) of section 23, or under that sub-section read with section 27.

(2) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to, or of the date of the refusal to make a fresh assessment under section 27, as the case may be; but the Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period P. 78.

(3) The appeal shall be in the prescribed form and shall be verified in the prescribed manner R. 21.

Hearing of appeal.

31. (1) The Assistant Commissioner shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing. P. 79, 80

(2) *The Assistant Commissioner may, before disposing* of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer.

(3) In disposing of an appeal the Assistant Commissioner may, in the case of an order of assessment,—

(a) confirm, reduce, enhance or annul the assessment, or

(b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment,

* *or, in the case of an order refusing to make a fresh assessment under section 27,*

(c) *confirm such order, or cancel it and direct the Income-tax Officer to make a fresh assessment;*

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* Inserted by the Indian Income-tax (Second Amendment) Act, 1930 (XXII of 1930)

or, in the cases of an order under sub-section (*2*) of section 25 or section 28,—

(*d*) confirm, cancel or vary such order:

Provided that the Assistant Commissioner shall not enhance an assessment unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

P. 80, 106-A. Appeals against orders of Assistant Commissioner.

32. (*1*) Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or to an order enhancing his assessment under sub-section (*3*) of section 31, may appeal to the Commissioner within thirty days of the making of such order.

R. 24. P. 68. (*2*) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner.

(*3*) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

P. 81. Power of review.

33. (*1*) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any authority subordinate to him or by himself when exercising the power of an Assistant Commissioner under sub-section (*4*) of section 5.

(*2*) On receipt of the record the Commissioner may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit:

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard.

Reference to Board of Referees.

* **33-A.** (*1*) Any person aggrieved by an order of an Income-tax Officer under sub-section (*1*) or sub-section (*2*) of section 23-A may, within thirty days of the date on which he was served with notice of such order, lodge an appeal in the office of the Commissioner.

P. 68. (*2*) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

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* Inserted by the Indian Income-tax (Amendment) Act, 1930 (XXI of 1930).

(3) The Commissioner shall refer such appeal, with a statement of his own opinion thereon, to a Board of Referees for decision; and the Board of Referees shall decide the appeal after hearing the appellant and any person deputed by the Commissioner: P. 81-A.

Provided that, before making a reference to a Board of Referees, the Commissioner may, and at the request of the appellant shall, in exercise of his powers of revision under section 33, decide the matters in dispute, and thereupon the assessee may withdraw his appeal or proceed with it

(4) The decision of the Board of Referees shall be forwarded to the Commissioner who shall transmit it to the Income-tax Officer who passed the original order, and shall also send copies to each Income-tax Officer who has made any assessment consequent upon such order, and where a decision reverses or modifies the order of the Income-tax Officer, fresh assessments shall be made in accordance therewith, or such consequential adjustments as may be required shall be made in any assessment already made

(5) The decision of a Board of Referees shall not be subject to appeal to any Income-tax authority, and shall not be revised by the Commmissioner in exercise of his powers under section 33 P. 81.

(6) A Board of Referees shall consist of not less than three and not more than five persons, of whom not less than one-half shall be non-officials having business experience, and one shall be a judicial officer not inferior in rank to a Subordinate Judge or a Judge of a Small Cause Court who has held judicial office for a period of not less than ten years.

(7) Subject to the provisions of sub-section (6), the Central Board of Revenue may make rules regulating the formation, composition and procedure of Boards of Referees.

Income escaping assessment.

34. If for any reason income, profits or gains chargeable to income-tax has escaped assessment in any year or has been assessed at too low a rate, the Income-tax Officer may, at any time within one year or the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the require- P. 82.

ments which may be included in a notice under sub-section (*2*) of section 22 and may proceed to assess or re-assess such income, profits, or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be.

P. 83. **35.** *(*1*) *The Commissioner or Assistant Commissioner may, at any time within one year from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision under section 33 and* the Income-tax Officer may, at any time within one year from the date of any demand made upon an assessee, on his own motion rectify any mistake apparent from the record of the **appeal, revision or assessment, as the case may be*, and shall within the like period rectify any such mistake which has been brought to his notice by **the* assessee :

Rectification of mistake.

Provided that no such rectification shall be made, having the effect of enhancing an assessment unless the **Commissioner, the Assistant Commissioner or the Income-tax Officer, as the case may be,* has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard.

(*2*) Where any such rectification has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(*3*) Where any such rectification has the effect of enhancing the assessment, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 29, and the provisions of this Act shall apply accordingly.

P. 84. **36.** In the determination of the amount of tax or of a refund payable under this Act, fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

Tax to be calculated to nearest anna.

* Amended by Income-tax (Amendment) Act, 1928 (III of 1928).

37. The Income-tax Officer, Assistant Commissioner and Commissioner shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:— P. 70, 83.

Power to take evidence on oath, etc

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents; and

(c) issuing commissions for the examination of witnesses;

and any proceeding before an Income-tax Officer, Assistant Commissioner or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 **and for the purposes of section 196* of the Indian Penal Code. P. 70.

38. The Income-tax Officer or Assistant Commissioner may, for the purposes of this Act,—

Power to call for information

(1) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses;

(2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses.

39. The Income-tax Officer or Assistant Commissioner, or any person authorised in writing in this behalf by the Income-tax Officer or Assistant Commissioner, may inspect and, if necessary, take copies or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register. P. 70.

Power to inspect the register of members of any company

* Inserted by the Indian Income-tax (Second Amendment) Act, 1930 (XXII of 1930).

CHAPTER V.

Liability in Special Cases.

P. 85.

Guardians, trustees and agents.

40. In the case of any guardian, trustee or agent of any person being a minor, lunatic or idiot or residing out of British India (all of which persons are hereinafter in this section included in the term " beneficiary ") being in receipt on behalf of such beneficiary of any income, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age, sound mind, or resident in British India, and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

P. 85.

Courts of Wards, etc.

41. In the case of income, profits or gains chargeable under this Act which are received by the Courts of Wards, the Administrators-General, the Official Trustees or by any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager in the like manner and to the same amounts as it would be leviable upon and recoverable from any person on whose behalf such income, profits or gains are received, and all the provisions of this Act shall apply accordingly.

P. 15, 53, 86, 87.

R. 33.

Non-residents.

42. (*1*) In the case of any person residing out of British India, all profits or gains accruing or arising to such person, whether directly or indirectly, through or from any business connection or property in British India, shall be deemed to be income accruing or arising within British India, and shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax :

P. 91.

Provided that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come, within British India.

(2) Where a person not resident in British India, and not being a British subject or a firm or company constituted within His Majesty's dominions or a branch thereof, carries on business with a person resident in British India, and it appears to the Income-tax Officer or the Assistant Commissioner, as the case may be, that owing to the close connection between the resident and the non-resident person and to the substantial control exercised by the non-resident over the resident, the course of business between those persons is so arranged, that the business done by the resident in pursuance of his connection with the non-resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax. P. 87.

*(3) Where any profits or gains have accrued or arisen to any person directly or indirectly from the sale in British India by him or by any agency or branch on his behalf of any merchandise exported to British India by him or any agency or branch on his behalf from any place outside British India, the profits or gains shall be deemed to have accrued and arisen and to have been received in British India, and no allowance shall be made under sub-section (2) of section 10 in respect of any buying or other commission whatsoever not actually paid, or of any other amounts not actually spent, for the purpose of earning such profits or gains.

Agents to include persons treated as such.

43. Any person employed by or on behalf of a person residing out of British India, or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent: P. 87.

Provided that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Income-tax Officer as to his liability.

* Inserted by the Income-tax (Amendment) Act, 1928 (III of 1928).

P. 74. **44.** Where any business, profession or vocation carried on by a firm has been discontinued, every person who was at the time of such discontinuance a member of such firm shall be jointly and severally liable for the amount of the tax payable in respect of the income, profits and gains of the firm.

Liability in case of a discontinued firm or partnership.

CHAPTER V-A.*

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING.

P. 90. **44-A.** The provisions of this Chapter shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of British India and carries on business in British India in any year as the owner or charterer of a ship (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act.

Liability to tax of occasional shipping.

44-B. (*1*) Before the departure from any port in British India of any ship in respect of which the provisions of this Chapter apply, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, livestock or goods shipped at that port since the last arrival of the ship thereat.

Return of profits and gains.

(*2*) On receipt of the return, the Income-tax Officer shall assess the amount referred to in sub-section (*1*), and for this purpose may call for such accounts or documents as he may require, and one-twentieth of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the car-

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* Inserted by the Income-tax (Further Amendment) Act, 1923 (XXVII of 1923).

iage of the passengers, live-stock and goods shipped at he port.

(3) When the profits and gains have been assessed as foresaid, the Income-tax Officer shall determine the sum ayable as tax thereon at the rate for the time being appliable to the total income of a company, and such sum shall e payable by the master of the ship, and a port-clearance hall not be granted to the ship until the Customs-collector, r other officer duly authorised to grant the same, is satisied that the tax has been duly paid.

Adjustment

44-C. Nothing in this Chapter shall be deemed to prevent a principal from claiming, in any year following that in which any payment has been made on his behalf under this Chapter, that n assessment be made of his total income in the previous ear, and that the tax payable on the basis thereof be deternined in accordance with the other provisions of this Act, nd, if he so claims, any such payment as aforesaid shall e treated as a payment in advance of the tax and the lifference between the sum so paid, and the amount of tax ound payable by him shall be paid by him or refunded to im, as the case may be.

CHAPTER VI.

Recovery of Tax and Penalties.

Tax when payable

45. Any amount specified as payable in a notice of demand **under sub-section (4) of section 23-A or* under section 29 or an order under section 31 or section 32 or section 33, shall be paid within the time, at the place and to the person mentioned n the notice or order, or if a time is not so mentioned, then n or before the first day of the second month following the late of the service of the notice or order, and any assessee ailing so to pay shall be deemed to be in default, provided hat, when an assessee has presented an appeal under secion 30 **or under section 33-A*, the Income-tax Officer may n his discretion treat the assessee as not being in default as ong as such appeal is undisposed of. **P. 91.**

* Inserted by the Indian Income-tax (Amendment) Act, 1930 (XXI of 1930).

P. 91. **46.** (*1*) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.

Mode and time of recovery.

*(*1-A*) For the purposes of sub-section (*1*) the Income-tax Officer may direct the recovery of any sum less than the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed the amount of the arrears payable.

P. 91. (*2*) The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceeed to recover from such assessee the amount specified therein as if it were an arrear of land-revenue.

P. 91. (*3*) In any area, with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the Income-tax Officer may proceed to recover the amount due by such process.

P. 91. (*4*) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (*3*).

P. 91. (*5*) If any assessee is in receipt of any income chargeable under the head "Salaries," the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition and shall pay the sums so deducted to the credit of the Government of India, or as the Central Board of Revenue directs.

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* Inserted by the Income-tax (Amendment) Act, 1928 (III of 1928).

(6) The Local Government may direct with respect to any specified area, that income-tax shall be recovered therein, with, and as an addition to, any municipal tax or local rate by the same person and in the same manner as the municipal tax or local rate is recovered

(7) Save in accordance with the provisions of sub-section (1) of section 42, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the year in which any demand is made under this Act P. 91.

Recovery of penalties

47. Any sum imposed by way of penalty under the provisions of sub-section (2) of section 25, section 28 or sub-section (1) of section 46, shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax P. 91.

CHAPTER VII

REFUNDS.

Refunds

48. (1) If a shareholder in a company who has received any dividend therefrom satisfies the Income-tax Officer **or other authority appointed by the Governor General in Council in this behalf* that the rate of income-tax applicable to the profits or gains of the company at the time of the declaration of such dividend is greater than the rate applicable to his total income of the year in which such dividend was declared, he shall, on production of the certificate received by him under the provisions of section 20, be entitled to a refund on the amount of such dividend (including the amount of the tax thereon) calculated at the difference between those rates. P. 11, 63, 92.

(2) [illegible] Income-tax Off[illegible] *Governor Genera*[illegible] income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been levied on the profits or gains of the firm of that year, he shall be entitled P. 10, 11, 55, 72, 92.

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*Inserted by the Indian Income-tax (Second Amendment) Act, 1930 (XXII of 1930)

to a refund on his share of those profits or gains calculated at the difference between those rates.

P. 11, 59, 61, 92. (3) If the owner of a security from the interest on which, or any person from whose salary, income-tax has been deducted in accordance with the provisions of section 18, satisfies the Income-tax Officer **or other authority appointed by the Governor General in Council in this behalf* that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been charged in making such deduction in that year, he shall be entitled to a refund on the amount of interest or salary from which such deduction has been made calculated at the difference between those rates.

P. 92. †(4) For the purposes of this section, 'total income' includes, in the case of any person not resident in British India, all income, profits and gains wherever arising, accruing or received, which, if arising, accruing or received in British India, would be included in the computation of total income under section 16.

P. 92. †(5) Nothing in this section shall entitle to any refund any person not resident in British India who is neither a British subject as defined in section 27 of the British Nationality and Status of Aliens Act, 1914, nor a subject of a State in India.

P. 93, 93-A, 94. 49. (1) If any person who has paid Indian income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid United Kingdom income-tax for that year in respect of the same part of his income, and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax and the rate at which he was entitled to, and obtained, relief under that section:

Relief in respect of United Kingdom income-tax.

Provided that the rate at which the refund is to be given shall not exceed one-half of the Indian rate of tax.

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* Inserted by the Indian Income-tax (Second Amendment) Act, 1930 (XXII of 1930).

† Inserted by the Income-tax (Amendment) Act, 1928 (III of 1928).

(2) In sub-section (1)—

(a) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act;

(b) the expression "Indian rate of tax" means the amount of the Indian income-tax divided by the income on which it was charged;

(c) the expression "United Kingdom income-tax" means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts.

Limitation of claims for refund.

50. No claim to any refund of income-tax under this Chapter shall be allowed, unless it is made within one year from the last day of the year in which the tax was recovered **or before the last day of the financial year commencing after the expiry of the "previous year", as defined in clause (11) of section 2 in which the income arose on which the tax was recovered, whichever period may expire later · Provided that a claim to refund under section 49 may be admitted after the period of limitation herein prescribed, when the applicant satisfies the Commissioner, or an Assistant Commissioner of Income-tax specially empowered in this behalf by the Central Board of Revenue, that he had sufficient cause for not making the claim within such period.* P. 95, B.

CHAPTER VIII.

Offences and Penalties.

Failure to make payments or deliver returns or statements or allow inspection.

51. If a person fails without reasonable cause or excuse— P. 59, 71.

(a) to deduct and pay any tax as required by section 18 or under sub-section (5) of section 46;

(b) to furnish a certificate required by sub-section (9) of section 18 or by section 20 to be furnished;

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* Inserted by the Indian Income-tax (Second Amendment) Act, 1930 (XXII of 1930).

P. 64, 65, 66, 67, 69.

(c) to furnish in due time any of the returns mentioned in *section 19-A**, section 21, section 22, or section 38;

(d) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (*4*) of section 22, such accounts and documents as are referred to in the notice;

(e) to grant inspection or allow copies to be taken in accordance with the provisions of section 39,

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

P. 68, 78.

False statement in declaration.

52. If a person makes a statement in a verification mentioned in **section 19-A*, or section 22, †*or sub-section (2) of section 26-A*., or sub-section (*3*) of section 30 or sub-section (*2*) of section 32 †*or sub-section (2) of section 33-A*, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be deemed to have committed the offence described in Section 177 of the Indian Penal Code. XLV of 1860.

P. 63, 96.

Prosecution to be at instance of Assistant Commissioner.

53. (*1*) A person shall not be proceeded against for an offence under section 51 or section 52 except at the instance of the Assistant Commissioner.

(*2*) The Assistant Commissioner may stay any such proceeding or compound any such offence.

P. 9, 97.

Disclosure of information by a public servant.

54. (*1*) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding, relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and, notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, I of 1872.

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* Inserted by the Indian Income-tax (Amendment) Act, 1926 (XXIV of 1926).

† Inserted by the Indian Income-tax (Amendment) Act, 1930 (XXI of 1930).

save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine·

Provided that nothing in this section shall apply to the disclosure—

(a) of any such particulars for the purposes of a prosecution under * . . the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or

LV 1860.

(b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or

(c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or

(d) of such facts to an authorised officer of the United Kingdom, as may be necessary to enable relief to be given under section 27 of the Finance Act, 1920, or a refund to be given under section 49 of this Act:

& 11 ... V. ... 18.

†Provided, further, that nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 26-A, or to the giving of evidence by a public servant in respect thereof.

* *Amended by the Indian Income-tax (Second Amendment) Act,* 1930 (XXII of 1930)

† Inserted by the Indian Income-tax (Amendment) Act, 1930 (XXI of 1930).

Provided, further, that no prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

CHAPTER IX.

SUPER-TAX.

P. 2, 10, 11, 12, 98. Charge of super-tax.

55. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any **individual, Hindu undivided family, company, unregistered firm or other association of individuals, not being a registered firm,*† *an* additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Indian Legislature.

P. 55, 98. Provided that, where the profits and gains of an unregistered firm have been assessed to super-tax, super-tax shall not be payable by an individual having a share in the firm in respect of the amount of such profits and gains which is proportionate to his share.

P. 11, 98. Total income for purposes of super-tax.

56. Subject to the provisions of this Chapter, the total income of any **individual, Hindu undivided family, company, unregistered firm or other association of individuals*, shall, for the purposes of super-tax be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year.

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P. 99. Non-resident partners and shareholders.

57. (*1*) In the case of any‡ person residing out of British India who is a member of a registered firm, and whose share of the profits from such firm is liable to super-tax, the remaining members of such firm who are resident in British India shall

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* Amended by the Income-tax (Amendment) Act, 1924 (XI of 1924).

† NOTE.—See note to Section 3.

1* Inserted by Income-tax (Amendment) Act, 1925 (V of 1925) and repealed by Income-tax (Amendment) Act, 1928 (III of 1928).

‡ Amended by Income-tax (Amendment) Act, 1926 (XXIV of 1926).

be jointly and severally liable to pay the super-tax due from the non-resident member in respect of such share.

*(2) Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of British India and that the total income of such person will in any year exceed the maximum amount ider the law for the in writing require deduct at the time of payment of any dividend from the company to the shareholder in that year super-tax at such rate as the Income-tax Officer may determine as being the rate applicable in respect of the income of the shareholder in that year

*(3) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by a company (together with the amount of any income-tax payable by the company in respect thereof) exceeds the maximum amount of the total income of a person which is not chargeable to super-tax under the law for the time being in force, and the principal officer of the company has not reason to believe that the shareholder is resident in British India, and no order under sub-section (2) has been received in respect of such shareholder by the principal officer from the Income-tax Officer, the principal officer shall at the time of payment deduct super-tax on the amount of such excess at the rate which would be applicable under the law for the time being in force if the *amount of such dividend or dividends (together with the* amount of such income-tax as aforesaid) constituted the whole total income of the shareholder.

(4) Where any person pays any tax under the provisions of this section on account of †*another person* who is credit shall be given therefor the tax to be payable by any *erson* under the provisions of

Application of Act to super-tax

58. (1) All the provisions of this Act, except section 3, the proviso to sub-section (1) of section 7, the provisos to section 8, sub-section (2) of section 14, and sections 15, 17, 18, 19, 20, 21 and P. 92, 98.

* Amended by Income-tax (Amendment) Act, 1926 (XXIV of 1926)
† Inserted by the Income-tax (Amendment) Act, 1926 (XXIV of 1926).

48 shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax.

*Provided that sub-sections (*4*) to (*9*) of section 18 shall apply, so far as may be, to the assessment, collection and recovery of super-tax under sub-section (*2*) or sub-section (*3*) of section 57 *and under section 58-H*.†

(*2*) Save as provided in section 57 *and section 58-H*,† super-tax shall be payable by the assessee direct.

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†CHAPTER IX-A.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUNDS.

P. 20-A. **58-A.** In this Chapter, unless there is anything repugnant in the subject or context,—

Definitions.

(*a*) a "recognised provident fund" means a provident fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter;

(*b*) an "employer" means—

(*i*) a Hindu undivided family, company, firm or other association of individuals or persons, or

(*ii*) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10 or section 11, maintaining a provident fund for the benefit of his or its employees;

(*c*) an "employee" means an employee participating in a provident fund, but does not include a personal or domestic servant;

(*d*) a "contribution" means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest;

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* Inserted by the Income-tax (Amendment) Act, 1926 (XXIV of 1926).

† Inserted by the Indian Income-tax (Provident Funds Relief) Act, 1929 (XII of 1929).

(e) the "balance to the credit" of an employee means the total amount to the credit of his individual account in a provident fund at any time;

(f) the "annual accretion" to the balance to the credit of an employee means the increase to such balance in any year, arising from contributions and interest;

(g) the "accumulated balance due" to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund, and

(h) the "regulations of a fund" means the special body of regulations governing the constitution and administration of a particular provident fund.

The according and withdrawal of recognition

58-B. (1) The Commissioner of Income-tax may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in section 58-C and the rules made thereunder, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions **P. 20-B.**

(2) The Governor General in Council may, at his discretion, direct the Commissioner of Income-tax to refuse to accord recognition to any provident fund, or may, at any time, withdraw recognition from any recognised provident fund.

(3) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Central Board of Revenue may make in this behalf, such date not being later than the last day of the financial year in which the order is made

(4) An order withdrawing recognition shall take effect from the day on which it is made.

(5) An employer objecting to an order of the Commissioner refusing to recognise a provident fund may appeal, within sixty days of such order, to the Central Board of Revenue.

The appeal shall be in the form and shall be verified in *the manner prescribed by the Central Board of Revenue.*

P. 20C, 20-D.

Conditions to be satisfied by a recognised provident fund.

58-C. (*1*) In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below and any other conditions which the Governor General in Council may, by rule, prescribe—

(*a*) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in British India.

(*b*) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund.

(*c*) Subject to the provisions of section 58-D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year.

(*d*) The fund shall consist of contributions as above specified, of accumulations thereof, and of interest (simple and compound), credited in respect of such contributions and accumulations, and of securities purchased therewith, and of no other sums.

(*e*) The fund shall be vested in two or more trustees* or in the Official Trustee, under a trust which shall not be revocable save with the consent of all the beneficiaries.

P (*f*) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund.

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* Inserted by the Income-tax (Amendment) Act, 1931 (IV of 1931).

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund.

(*g*) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund.

(*h*) Save as provided in clause (*g*), or in accordance with such conditions and restrictions as the Governor General in Council may, by rules, prescribe, no portion of the balance to the credit of an employee shall be payable to him.

(*2*) Where there is a repugnance between any regulation of a recognised provident fund and any provision of this Chapter or of the rules made thereunder, the regulation shall, to the extent of the repugnance, be of no effect.

The Commissioner may, at any time, require that such repugnance shall be removed from the regulations of the fund.

Power to relax restrictions of employer's contributions in certain cases.

58-D. Subject to any rules which the Governor General in Council may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (*c*) of sub-section (*1*) of section 58-C— **P. 20-C.**

(*a*) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem; and

(*b*) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

58-E. The annual accretion in any year to the balance at the credit of an employee participating in a recognised provident fund shall be deemed to have been received by him in that year and shall be included in his total income for that year, and, subject to the exemptions specified in section 58-F, shall be liable to income-tax and super-tax:

Annual accretion deemed to be income received.

Provided that, for the purpose of sub-section (3) of section 15, out of such annual accretion only the employee's own contributions shall be included in his total income.

P. 11, 20, 20-E, 20-F. 58-F. (1) An employee shall not be liable to pay income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any year does not exceed one-sixth of his salary in that year.

Exemption of annual accretion from income tax.

(2) In the accounts of a recognised provident fund, the contributions exempted from income-tax under sub-section (1) and accumulations thereof shall be shown separately, and interest thereon shall be calculated and shown separately. Such interest shall be exempt from payment of income-tax, in so far as it is allowed at a rate not exceeding such rate as the Governor General in Council may, by notification in the Gazette of India, fix in this behalf.

P. 20. 58-G. Where an employee participating in a recognised provident fund has rendered continuous service with his employer for a period of not less than five years, and the accumulated balance due to him becomes payable, such accumulated balance shall be exempt from payment of income-tax and super-tax, and shall be excluded from the computation of his total income:

Exemption of accumulated balance from income-tax and super-tax.

Provided that the Commissioner of Income-tax may allow such exemption and exclusion where the employee has rendered continuous service with the employer for a period of less than five years, if, in his opinion, the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employer's business, or other cause beyond the control of the employee.

P (2) Where exemption from payment of income-tax is not allowed under the provisions of sub-section (1), the Income-tax Officer shall calculate the total of the various

sums of income-tax from the payment of which the contributions and interest credited to the employee's individual account have been exempted under the provisions of sub-sections (*1*) and (*2*) of section 58-F, and such total shall be payable by the employee, in addition to any other income-tax for which he may be liable for the year in which the accumulated balance due to him becomes payable

Deduction at source of income-tax payable on accumulated balances due.

58-H. The trustees of a recognised provident fund, or other person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, at the time an accumulated balance due to an employee is paid, deduct t[illegible] able under sub-section (*2*) o[illegible] tax and super-tax payable [illegible] as determined under sub-section (*3*) of section 58-J, and sub-sections (*4*) to (*9*) of section 18 shall apply as if the sum to be deducted were income-tax payable under the head "Salaries"

Accounts of recognised provident funds

58-I. (*1*) The accounts of a recognised provident fund P. 20-G.
shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars as the Central Board of Revenue may prescribe

(*2*) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Central Board of Revenue may prescribe

Treatment of balances in newly recognised provident funds

58-J. (*1*) Where recognition is accorded to a provident P. 20-G.
fund with existing balances, an account shall be made of the fund up to the day before the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Central Board of Revenue may prescribe

(*2*) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-sections (*3*) and (*4*) shall apply thereto

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income-tax and super-tax in accordance with the provisions of this Act other than this Chapter.

(3) Subject to such rules as the Central Board of Revenue may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Chapter had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any such sum, and such aggregate (if any) shall be deemed to be income received by the employee in the year in which the recognition of the fund takes effect, and shall be included in the employee's total income for that year; and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance:

Provided that, in cases of serious accounting difficulty, the Commissioner shall have power subject to the said rules, to make a summary calculation of such aggregate.

(4) Notwithstanding anything contained in condition (h) of sub-section (1) of section 58-C, an employee, in order to enable him to pay the amount of tax assessed on his total income as determined under sub-section (3), shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance had not been included in his total income.

(5) Nothing in this section shall affect the rights of the persons administering an unrecognised provident fund or dealing with it, or with the balance to the credit of any individual employee, before recognition is accorded, in any manner which may be lawful.

P. 20-H. 58-K. (1) Where an employer who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust

Treatment of fund transferred by employer to trustee

for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall be deemed to be an expenditure by the employer within the meaning of clause (*ix*) of sub-section (2) of section 10, incurred in the year in which the accumulated balance due to the employee is paid

Provisions relating to rules

58-L. (1) All rules made under this Chapter shall be subject to the provisions of sub-sections (4) and (5) of section 59.

(2) In addition to any power conferred by this Chapter, the Governor General in Council may make rules—

(*a*) prescribing the statements and other information to be submitted with an application for recognition;

(*b*) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company,

(*c*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund;

(*d*) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn; and

(*e*) generally, to carry out the purposes of this Chapter and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as he may deem requisite

58-M. This Chapter shall not apply to any provident fund to which the Provident Funds Act, 1925, applies. XIX of 1925.

Application of this Chapter.

CHAPTER X.

MISCELLANEOUS.

P. 101. 59. (1) The Central Board of Revenue may, subject to the control of the Governor General in Council, make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income. Such rules may be made for the whole of British India or for such part thereof as may be specified.

Power to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the manner in which, and the procedure by which, the income, profits and gains shall be arrived at in the case of—

R. 23-24.
P. 107.
R. 25-32, 35.
R. 33-35.
R. 36-40.

(i) incomes derived in part from agriculture and in part from business;

(ii) insurance companies;

(iii) persons residing out of British India;

(b) prescribe the procedure to be followed on applications for refunds;

(c) provide for such arrangements with His Majesty's Government as may be necessary to enable the appropriate relief to be granted under section 27 of the Finance Act, 1920, or under section 49 of this Act; 10 & 11 Geo. v. ch. 18.

(d) prescribe the year which, for the purpose of relief under section 49, is to be taken as corresponding to the year of assessment for the purposes of section 27 of the Finance Act, 1920; and 10 & 11 Geo. v. ch. 18.

(e) provide for any matter which by this Act is to be prescribed.

*(3) In cases coming under clause (a) of sub-section (2), where the income, profits and gains liable to tax cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which, in the opinion of the Central Board of Revenue, is unreasonable, the rules made under that sub-section may—

(a) prescribe methods by which an estimate of such income, profits and gains may be made, and

(b) in cases coming under sub-clause (i) of clause (a) of sub-section (2), prescribe the proportion of the income which shall be deemed to be income, profits and gains liable to tax,

and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.

(4) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication. **P. 101.**

(5) Rules made under this section shall be published in the Gazette of India, and shall thereupon have effect as if enacted in this Act

Power to make exemptions, etc.

60. (1) The Governor-General in Council may, by notification in the Gazette of India, make an exemption, reduction in rate or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons. **P. 17, 17-A, 34-A.**

†(2) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Governor General in Council may grant such relief as he may think fit.

Appearance by authorised representative

61. Any assessee, who is entitled or required to attend before any Income-tax authority in connection with any proceedings, under this Act, may attend either in person or by any person authorised by him in writing in this behalf. **P. 71.**

Receipts to be given

62. A receipt shall be given for any money paid or recovered under this Act.

* Inserted by the Income-tax (Amendment) Act, 1927 (XXVIII of 1927)

† Inserted by the Indian Income-tax (Amendment) Act, 1930 (XXII of 1930.

P. 104. **63.** (*1*) A notice or requisition under this Act may be served on the person therein-named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908. V. of 1908.

Service of notices.

(*2*) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or to the manager, or any adult male member of the family **and, in the case of any other association of individuals, be addressed to the principal officer thereof.*

P. 105. **64.** (*1*) Where an assessee carries on business at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the business is carried on in more places than one, by the Income-tax Officer of the area in which his principal place of business is situate.

Place of assessment.

(*2*) In all other cases an assessee shall be assessed by the Income-tax Officer of the area in which he resides.

(*3*) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner, or, where the question is between places in more provinces than one, by the Commissioners concerned, or, if they are not in agreement, by the Central Board of Revenue:

Provided that, before any such question is determined the assessee shall have had an opportunity of representing his views.

P. 24, 64. (*4*) Notwithstanding anything contained in this section, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed.

65. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

Indemnity.

P. 106. **66.** (*1*) If, in the course of any assessment under this Act or any proceeding in connection therewith other than a proceeding under Chapter VIII, a question of law arises,

Statement of case by Commissioner to High Court.

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* Amended by the Income-tax (Amendment) Act, 1924 (XI of 1924).

the Commissioner may, either on his own motion or on reference from any Income-tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court

(*2*) **Within sixty days of the date on which he is served with notice of an order under section 31 or section 32* †*or of a decision by a Board of Referees under section 33-A*, the assessee in respect of whom the order †*or decision* was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Commissioner to refer to the High Court any question of law arising out of such order †*or decision*, and the Commissioner shall, within **sixty days* of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court:

Provided that if in exercise of his power of *revision*‡ under section 33, the Commissioner decides the question, the assessee may withdraw his application, and if he does so, the fee paid shall be refunded.

(*3*) If on any application being made under sub-section (*2*), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may apply §*within six months from the date on which he is served with notice of the refusal* to the High Court, and the High Court if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to state the case and to refer it, and, on receipt of any such requisition, the Commissioner shall state and refer the case accordingly.

(*4*) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Commissioner by whom it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf.

(*5*) The High Court upon the hearing of any such case shall decide the questions of law raised thereby, and shall deliver its judgment thereon containing the grounds on

* Amended by the Indian Income-tax (Second Amendment) Act, 1930 (XXII of 1930).

† Inserted by the Indian Income-tax (Amendment) Act, 1930 (XXI of 1930)

‡ Amended by the Income-tax (Amendment) Act, 1928 (III of 1928)

§ Amended by the Income-tax (Amendment) Act, 1924 (XI of 1924)

which such decision is founded, and shall send to the Commissioner by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Commissioner shall dispose of the case accordingly, or, if the case arose on a reference from any Income-tax authority subordinate to him, shall forward a copy of such judgment to such authority who shall dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court on the application of an assessee, the costs shall be in the discretion of the Court.

P. 91. (7) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case:

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow.

*(8) For the purposes of this section "the High Court" means—

(a) in relation to the North-West Frontier Province and British Baluchistan, the High Court of Judicature at Lahore;

(b) in relation to the province of Ajmer-Merwara, the High Court of Judicature at Allahabad; and

(c) in relation to the province of Coorg, the High Court of Judicature at Madras.

P. 106, 106-A.

Reference to be heard by Benches of High Courts, and appeal to lie in certain cases to Privy Council.

***66-A.** (1) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908, shall, V of 1908.
so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force.

(2) An appeal shall lie to His Majesty in Council from any judgment of the High Court delivered on a reference

* Inserted by the Income-tax (Amendment) Act, 1926 (XXIV of 1926).

made under section 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council.

V of 1908. (3) The provisions of the Code of Civil Procedure, 1908, relating to appeals to His Majesty in Council shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court.

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (5) or sub-section (7) of section 66:

Provided, further that the High Court may, on petition made for the execution of the order of His Majesty in Council in respect of any costs awarded thereby, transmit the order for execution to any Court subordinate to the High Court

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of His Majesty in Council in the manner provided in sub-sections (5) and (7) of section 66 in the case of a judgment of the High Court.

(5) Nothing in this section shall be deemed—

(a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee

Bar of suits in Civil Court

67. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any Government officer for anything in good faith done or intended to be done under this Act

Computation of periods of limitation.

***67-A.** In computing the period of limitation prescribed for an appeal under this Act or for an application under section 66, the day on which the order complained of **P. 106-A**

* Inserted by the Indian Income-tax (Second Amendment) Act, 1930 (*XXII of 1930*).

was made, and the time requisite for obtaining a copy of such order, shall be excluded.

*68. [*Repealed.*]

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†*Extract from the Indian Finance Act, 1931.*

* * * * * *

1. (*1*) This Act may be called the Indian Finance Act, 1931.

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7. (*1*) Income-tax for the year beginning on the first day of April, 1931, shall be charged at the rates specified in Part I of the fourth Schedule.

(*2*) The rates of super-tax for the year beginning on the first day of April, 1931, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of the fourth Schedule.

(*3*) For the purposes of the fourth Schedule "total income" means total income as determined, for the purposes of income-tax or super-tax as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922.

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SCHEDULE IV.

[See section 7.]

PART I.

Rates of Income-tax.

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—

	Rate.
(1) When the total income is less than Rs. 2,000.	*Nil.*
(2) When the total income is Rs. 2,000 or upwards, but is less than Rs. 5,000.	Six pies in the rupee.
(3) When the total income is Rs. 5,000 or upwards, but is less than Rs. 10,000.	Nine pies in the rupee.
(4) When the total income is Rs. 10,000 or upwards, but is less than Rs. 15,000.	One anna in the rupee.
(5) When the total income is Rs. 15,000 or upwards, but is less than Rs. 20,000.	One anna and four pies in the rupee.

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* Repealed by the Repealing Act, 1927 (XII of 1927).

† Amended by the Indian Finance (Supplementary and Extending) Act, 1931 (page 60 of the manual).

	Rate.
(6) When the total income is Rs. 20,000 or upwards, but is less than Rs. 30,000	One anna and seven pies in the rupee.
(7) When the total income is Rs. 30,000 or upwards, but is less than Rs. 40,000.	One anna and eleven pies in the rupee.
(8) When the total income is Rs. 40,000 or upwards, but is less than Rs 1,00,000	Two annas and one pie in the rupee.
(9) When the total income is Rs. 1,00,000 or upwards.	Two annas and two pies in the rupee.
B In the case of every company and registered firm, whatever its total income.	Two annas and two pies in the rupee.

PART II.

Rates of Super-tax.

In respect of the excess over thirty thousand rupees of total income—

	Rate
(1) in the case of every company—	
(a) in respect of the first twenty thousand rupees of such excess	*Nil.*
(b) for every rupee of the remainder of such excess.	One anna in the rupee
(2) (a) in the case of every Hindu undivided family—	
(i) in respect of the first forty-five thousand rupees of such excess	*Nil.*
(ii) for every rupee of the next twenty-five thousand rupees of such excess.	One anna and three pies in the rupee
(b) in the case of every individual, unregistered firm and other association of individuals not being a registered firm or a company—	
(i) for every rupee of the first twenty thousand rupees of such excess.	Nine pies in the rupee.
(ii) for every rupee of the next fifty thousand rupees of such excess	One anna and three pies in the rupee.
(c) in the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—	
(i) for every rupee of the next fifty thousand rupees of such excess	One anna and nine pies in the rupee.
(ii) for every rupee of the next fifty thousand rupees of such excess.	Two annas and three pies in the rupee.
(iii) for every rupee of the next fifty thousand rupees of such excess	Two annas and nine pies in the rupee

	Rate.
(*iv*) for every rupee of the next fifty thousand rupees of such excess.	Three annas and three pies in the rupee.
(*v*) for every rupee of the next fifty thousand rupees of such excess.	Three annas and nine pies in the rupee.
(*vi*) for every rupee of the next fifty thousand rupees of such excess.	Four annas and three pies in the rupee.
(*vii*) for every rupee of the next fifty thousand rupees of such excess.	Four annas and nine pies in the rupee.
(*viii*) for every rupee of the next fifty thousand rupees of such excess.	Five annas and three pies in the rupee.
(*ix*) for every rupee of the next fifty thousand rupees of such excess.	Five annas and nine pies in the rupee.
(*x*) for every rupee of the remainder of such excess.	Six annas and three pies in the rupee.

Extracts from the Indian Finance (Supplementary and Extending) Act, 1931.

1. This Act may be called the Indian Finance (Supplementary and Extending) Act, 1931.

2. The operation of section 2 of the Indian Finance Act, 1931, fixing the rate of salt duty for the year beginning on the 1st April, 1931, of section 5 of the said Act and the Third Schedule thereto as amended by section 6 of this Act, fixing inland postage rates for the said year, and of section 7 of the said Act and the Fourth Schedule thereto as amended by sections 7, 8 and 9 of this Act, fixing rates of income-tax and super-tax for the said year, is hereby extended to the 31st day of March, 1933.

* * * * * *

7. (*1*) In Part I of Schedule IV to the Indian Finance Act, 1931, for the item—

"When the total income is less than Rs. 2,000.	*Nil*"

the following shall be substituted, namely:—

"When the total income is Rs. 1,000 or upwards but is less than Rs. 2,000.	Four pies in the rupee.":

Provided that for the year beginning on the 1st day of April, 1931, the rate chargeable on any such total income shall be two pies in the rupee only.

serve on the assessee a notice of demand in a form to be prescribed by the Central Board of Revenue; and such notice shall be deemed to be a notice of demand under section 29 of that Act.

2. Any assessee in respect of whom such summary assessment has been made may, within thirty days of receipt of the notice of demand, make an application to the Income-tax Officer for the cancellation or revision of the assessment, and the Income-tax Officer shall, after examining any accounts and documents and hearing any evidence which the assessee may produce, and such other evidence as the Income-tax Officer may require, determine, by order in writing, the amount of the tax, if any, payable by the assessee, and such determination shall be final:

Provided that, if any assessee making such application files therewith a return of his income under sub-section (*2*) of section 22 of the Indian Income-tax Act, 1922, the application shall be deemed to be a return under that sub-section and shall be dealt with accordingly

3. A copy of an order under paragraph 2 shall be served on the assessee to whom it relates and shall be deemed to be a notice of demand under section 29 of the Indian Income-tax Act, 1922.

4. The above procedure shall apply also to the assessment and collection during the financial year 1932-33 of incomes of Rs. 1,000 and upward and less than Rs 2,000 which have escaped assessment in the financial year 1931-32 "

PART II

(*See* section 8)

Adaptations for the assessment and collection of additional income-tax and super-tax in the current financial year

1. For the purposes of the proviso to sub-section (*2*) of section 18 of the Indian Income-tax Act, 1922, any person responsible for paying any income chargeable under the head " Salaries " shall be deemed to have made a deficient deduction in respect of the additional income-tax imposed by section 8 of this Act at the time of making all payments made before the commencement of this Act, and such person may make the adjustments permitted by that proviso.

fied in Schedule IV to the Indian Finance Act, 1931, excluding the rate imposed by section 7, shall be increased by one-fourth of its amount.

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SCHEDULE II.

Adaptations of the Indian Income-tax Act, 1922.

Part I.

(*See* section 7.)

Adaptations for the assessment and collection of income-tax in the current financial year on total incomes of Rs. 1,000 and upward and less than Rs. 2,000.

1. For the purposes of the proviso to sub-section (*2*) of section 18 of the Indian Income-tax Act, 1922, any person responsible for paying any income less than Rs. 2,000 chargeable under the head " Salaries " shall be deemed to have failed to deduct income-tax at the time of making all payments made before the commencement of this Act, and such person may make the adjustments permitted by that proviso.

2. Notwithstanding that the Income-tax Officer has assessed the total income of an assessee under section 23 of the Indian Income-tax Act, 1922, and has found that nothing is payable thereon, he may proceed to determine the sum payable by such assessee by virtue of section 7 of this Act, and such sum shall, for the purposes of the Indian Income-tax Act, 1922, be deemed to be a sum determined under section 23 of that Act.

* * * * * *

*" Part I-A.

(*See* section 7.)

Adaptations to provide for the summary assessment of such incomes.

1. The Income-tax Officer may, save where he has served a notice under sub-section (*2*) of section 22 of the Indian Income-tax Act, 1922, make a summary assessment of the income of an assessee to the best of his judgment, and shall

* Inserted by the Indian Finance (Supplementary and Extending) Amendment Act, 1932 (IV of 1932).

serve on the assessee a notice of demand in a form to be prescribed by the Central Board of Revenue; and such notice shall be deemed to be a notice of demand under section 29 of that Act.

2. Any assessee in respect of whom such summary assessment has been made may, within thirty days of receipt of the notice of demand, make an application to the Income-tax Officer for the cancellation or revision of the assessment, and the Income-tax Officer shall, after examining any accounts and documents and hearing any evidence which the assessee may produce, and such other evidence as the Income-tax Officer may require, determine, by order in writing, the amount of the tax, if any, payable by the assessee, and such determination shall be final:

Provided that, if any assessee making such application files therewith a return of his income under sub-section (2) [illegible] tax Act, 1922, the appli- [illegible] under that sub-section [illegible]

3. A copy of an order under paragraph 2 shall be served on the assessee to whom it relates and shall be deemed to be a notice of demand under section 29 of the Indian Income-tax Act, 1922.

4. The above procedure shall apply also to the assessment and collection during the financial year 1932-33 of incomes of Rs. 1,000 and upward and less than Rs 2,000 which have escaped assessment in the financial year 1931-32."

PART II.

(*See* section 8)

Adaptations for the assessment and collection of additional income-tax and super-tax in the current financial year

1. For the purposes of the proviso to sub-section (2) of section 18 of the Indian Income-tax Act, 1922, any person responsible for paying any income chargeable under the head "Salaries" shall be deemed to have made a deficient deduction in respect of the additional income-tax imposed by section 8 of this Act at the time of making all payments made before the commencement of this Act, and such person may make the adjustments permitted by that proviso.

2. Notwithstanding that the Income-tax Officer has assessed the total income of an assessee and has determined the sum payable thereon under section 23 of the Indian Income-tax Act, 1922, he may proceed to determine the further sum payable by such assessee by virtue of section 8 of this Act, and such further sum shall, for the purposes of the Indian Income-tax Act, 1922, be deemed to be a sum determined under section 23 of that Act.

ACT III OF 1926.

AN ACT TO DETERMINE THE LIABILITY OF CERTAIN GOVERNMENTS TO TAXATION IN BRITISH INDIA IN RESPECT OF TRADING OPERATIONS.

Whereas it is expedient to determine the liability to taxation for the time being in force in British India of the Government of any part of His Majesty's Dominions, exclusive of British India, in respect of any trade or business carried on by or on behalf of such Government; It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called the Government Trading Taxation Act, 1926.

(2) It shall come into force on such date* as the Governor General in Council may, by notification in the Gazette of India, appoint.

Liability of certain Governments to taxation in respect of trading operations.

2. (1) Where a trade or business of any kind is carried on by or on behalf of the Government of any part of His Majesty's Dominions, exclusive of British India, that Government shall, in respect of the trade or business and of all operations connected therewith, all property occupied in British India and all goods owned in British India for the purposes thereof, and all income arising in connection therewith, be liable—

(a) to taxation under the Indian Income-tax Act, 1922, in the same manner and to the same extent as in the like case a company would be liable; XI of 1922.

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* The Act came into force with effect from the 1st April 1926.

(*b*) to all other taxation for the time being in force in British India in the same manner as in the like case any other person would be liable.

(*2*) For the purposes of the levy and collection of income-tax under the Indian Income-tax Act, 1922, in accordance with the provisions of sub-section (*1*), any Government to which that sub-section applies shall be deemed to be a company within the meaning of that Act, and the provisions of that Act shall apply accordingly

(*3*) In this section the expression "His Majesty's Dominions" includes any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's Dominions.


RAJASTHAN UNIVERSITY
JAIPUR

PART II.

RULES.

BOARD OF INLAND REVENUE

Notification No. 3-I. T., dated the 1st April 1922 as subsequently amended.

In exercise of the powers conferred by section 59 of the Indian Income-tax Act, 1922 (XI of 1922), the Board of Inland Revenue has made the following rules, namely :—

1. These rules may be called the Indian Income-tax Rules, 1922.

2. Any firm constituted under an instrument of partnership specifying the individual shares of the partners may, for the purposes of clause (14) of section 2 of the Indian Income-tax Act, 1922 (hereinafter in these rules referred to as the Act), register with the Income-tax Officer the particulars contained in the said instrument on application in this behalf made by the partners or by any of them. **P. 10.**

Such application shall be made—

(a) before the income of the firm is assessed for any year under section 23 or

(b) if no part of the income of the firm has been assessed for any year under section 23, before the income of the firm is assessed under section 34, or

(c) with the permission of the Assistant Commissioner hearing an appeal under section 30, before the assessment is confirmed, reduced, enhanced or annulled, or, if the Assistant Commissioner sets aside the assessment and directs the Income-tax Officer to make a fresh assessment, before such fresh assessment is made

3. The application referred to in rule 2 shall be made in the form annexed to this rule and shall be accompanied by the original instrument of partnership under which the firm is constituted together with a copy thereof; provided that if the Income-tax Officer is satisfied that for some sufficient reason the original instrument cannot conveniently be [illegible] tified in writing by [illegible] and in such a ca[illegible] d by a duplicate copy.

FORM I.

Form of application for registration of a firm under section 2 (14) of the Indian Income-tax Act, 1922.

To

THE INCOME-TAX OFFICER,

Dated 19 .

I/we beg to apply for the registration of my/our firm under section 2 (*14*) of the Indian Income-tax Act, 1922.

2. The original/A certified copy of the instrument of partnership under which the firm is constituted specifying the individual shares of the partners together with a copy/duplicate copy is enclosed. The prescribed particulars are given below.

3. I/we do hereby certify that the profits of the current year will be actually divided or credited in accordance with the shares shown in this partnership deed.

Signature

Address

Name and address of the firm.	Names of the partners in the firm with the share of each in the business.	Date on which instrument of partnership was executed.	Date, if any, on which the instrument of partnership was last registered in the Income-tax Officer's office.	Remarks.

I/we do hereby certify that the infor-
ıation given above is correct.

Signature(s)

4. (*1*) On the production of the original instrument of artnership or on the acceptance by the Income-tax Officer f a certified copy thereof, the Income-tax Officer shall nter in writing at the foot of the instrument or copy, as ne case may be, the following certificate, namely.—

"This instrument of partnership (or this certified copy of an instrument of partnership) has this day been registered with me, the Income-tax Officer, for in the province of under clause (*14*) of section 2 of the Indian Income-tax Act, 1922 This certificate of registration has effect from the day of April 19 up to the 31st day of March 19 "

(*2*) The certificate shall be signed and dated by the Income-tax Officer who shall thereupon return to the appli-ant the instrument of partnership or the certified copy hereof, as the case may be, and shall retain the copy or luplicate copy thereof.

5. The certificate of registration granted under rule 4 shall have effect from the date of registration

6. A certificate of registration granted under rule 4 shall have effect up to the end of the financial year in which t is granted but shall be renewed by the Income-tax Officer from year to year
that behalf and accompanie
of the partners of the firm
as specified in the instrument of partnership remains unaltered. Such application shall be made within the time and subject to the conditions, if any, which are speci-fied in clause (*a*), clause (*b*), or clause (*c*), as the case may be, of rule 2.

7. Under section 9 (*1*) (*vi*) of the Act, the sum to be allowed in respect of collection charges shall not exceed 6 per cent. of the annual value of the property. P. 34.

P. 46. 8. An allowance under section 10 (*2*) (*vi*) of the Act in respect of depreciation of buildings, machinery, plant or furniture shall be made in accordance with the following statement :—

Class of buildings, machinery, plant or furniture.	Rate.	Remarks.
	Percentage on prime cost.	
1. Building*—		
(1) First class substantial buildings of selected materials.	2½	* Double these rates may be allowed for buildings used in industries which cause special deterioration, such as chemical works, soap and candle works, paper mills, and tanneries.
(2) Buildings of less substantial construction .	5	
(3) Purely temporary erections such as wooden structures.	10	
2. Machinery, Plant or Furniture†—		
General rate	5	† The special rates for electrical machinery given below may be adopted, at firm's option for that portion of their machinery.
Rates sanctioned for special industries—		
Flour Mills, Rice Mills, Bone Mills, Sugar Works, Distilleries, Ice Factories, Aerating Gas Factories, Match Factories.	6¼	
Paper Mills, Ship Building and Engineering Works, Iron and Brass Foundries, Aluminium Factories, Electrical Engineering Works, Motor Car Repairing Works, Galvanizing Works, Patent Stone Works, Oil Extraction Factories, Chemical Works, Soap and Candle Works, Lime Works, Saw Mills, Dyeing and Bleaching Works, Furniture and Plant in hotels and boarding houses, Cement Works using rotary kilns.	7½	
Plant used in connection with brick manufacture, tilemaking machinery, optical machinery, glass factories, Telephone Companies, Mines and Quarries, Tubewell boring plant, concrete pile driving machines.	10	
Sewing machines for canvas or leather . .	12½	
Motor cars used solely for the purpose of business.	15	
Indigenous sugarcane crushers (*Kohlus* or *Belans*).	15	
Motor taxis, motor lorries and motor buses .	20	
Ropeway ropes and trestle sheaves and connected parts.	25	
Ropeway structures—		
(1) Trestle and station steel work	5	
(2) Driving and tension gearing	7½	
(3) Carriers	10	

Class of buildings, machinery, plant or furniture	Rate.	Remarks.
	Percentage on prime cost.	
Salt Works—		
(1) Machinery, plant, locomotives, wagons and rolling stock	10	
(2) Tugs, barges, motor launches and floating plant.	7½	
(3) General plant and machinery used in engineering shops	7½	
3 Electrical Machinery—		
(a) Batteries	15	
[illegible]	7½	
[illegible]	6	
[illegible]	2½	
4 Hydro-Electric concerns—		
Hydraulic works, pipe lines, sluices, and all other items not otherwise provided for in this statement	2½	
5. Electric Tramways—		
Permanent way—		
(a) Not exceeding 50,000 car miles per mile of track per annum	6½	
(b) Exceeding 50,000 and not exceeding 75,000 car miles per mile of track per annum	7½	
(c) Exceeding 75,000 and not exceeding 1,25,000 car miles per mile of track per annum	8½	
Cars—car trucks, car bodies, electrical equipment and motors	7	
General plant, machinery and tools	5	
6 Mineral Oil concerns—		
A Refineries—		
(1) Boilers	10	
(2) Prime movers	5	
(3) Process plant	10	
B Field operations—		
(1) Boilers	10	
(2) Prime movers	5	
(3) Process plant	7½	
Except for the following items—		
(1) Below ground—All to be charged to revenue		
(2) Above ground—		
(a) Portable boilers, drilling tools, wellhead tank, rigs, etc	25	
(b) Storage tanks	10	

Class of buildings, machinery, plant or furniture.	Rate.	Remarks.
	Percentage on prime cost.	
6. Mineral Oil concerns—*contd.*		
Except for the following items—*contd.*		
(*c*) Pipe lines—		
(*i*) Fixed boilers	10	
(*ii*) Prime movers	7½	
(*iii*) Pipe line	10	
7. Ships—		
(1) Ocean—		
(*a*) Steam	5	
(*b*) Sail or tug	4	
(2) Inland—		
(*a*) Steamers (over 120 ft. in length)	5	
(*b*) Steamers including cargo launches (120 ft. in length and under).	6	
(*c*) Tug boats	7½	
(*d*) Iron or steel flats for cargo, etc.	5	
(*e*) Wooden cargo boats up to 50 tons capacity.	10	
(*f*) Wooden cargo boats over 50 tons capacity.	7½	
(*g*) Motor launches	10	
(*h*) Speed boats*	15	* "Speed Boats" means a motor-driven boat with a high speed internal combustion engine capable of propelling the boat at a speed exceeding 15 miles per hour in still water and so designed that when running at speed it will plane—*i.e.*, its bow will rise from the water.
8. Mines and Quarries—		
(1) Railway siding† (excluding rails)	5	† Depreciation on rails used for tramways and sidings, and in inclines where the rails are the property of the assessee, is allowed at 10 per cent. under item 2 above (plant used in connection with Mines and Quarries) in addition to any depreciation allowance on the cost of constructing the tramways sidings or inclines.
(2) Shafts	5	
(3) Inclines†	5	
(4) Tramways on the surface† (excluding rails).	10	
9. Aeroplanes—		
(1) Aircraft	25	
(2) Aero-engines	33⅓	
(3) Aerial photographic apparatus	20	

9. For the purpose of obtaining an allowance for depreciation under proviso (*a*) to section 10 (*2*) (*vi*) of the Act, the assessee shall furnish particulars to the Income-tax Officer in the following form :— **P. 46.**

Description of buildings, machinery, plant or furniture.	Original cost.	Capital expenditure during the year for additions, alterations, improvements and extensions.	Date from which used for the purposes of the business.	Particulars (including original cost, depreciation allowed and value realised by sale of scrap value) of obsolete machinery, plant or furniture sold or discarded during the year, with dates on which first brought into use and sold or discarded.	Remarks.
1	1-A	2	3	4	5

I declare that to the best of my information and belief the buildings, machinery, plant and furniture described in column 1 of the above statement were the property of during the year ended and that the particulars entered in the statement are correct and complete.

Place *Signature*

Date *Designation*

10. All sums deducted in accordance with the provisions of section 18 of the Act shall be paid by the person making the deduction to the credit of the Government of **P. 59.**

India on the same day as the deduction is made in the case of deduction by or on behalf of Government, and within one week from the date of such deduction in all other cases:

Provided that the Income-tax Officer may, in special cases, and with the approval of the Assistant Commissioner, permit a local authority, company, public body or association, or a private employer to pay the income-tax deducted from salaries quarterly on June 15th, September 15th, December 15th, and March 15th.

P. 59. 11. In the case of income chargeable under the head 'Salaries,' where deduction is not made by or on behalf of Government, the person paying the salary shall pay to the credit of the Government of India by remitting the amount to the Income-tax Officer concerned or to such officer as he may direct and shall send therewith a statement showing the name of the employé from whose salary the tax has been deducted, the period for which the salary has been paid, the gross amount of the salary, the deduction for a provident fund or insurance premia, and the amount of tax deducted.

11-A. The prescribed rate of exchange for the calculation of the value in rupees of any income chargeable under the head 'Salaries' which is payable to the assessee out of India by or on behalf of Government shall be the rate notified by the Controller of the Currency in respect of the recovery of contributions to the Indian Civil Service Fund for the month in which such income is payable.

P. 59. 12. In the case of income chargeable under the head 'Interest on securities,' where the deduction is not made by or on behalf of Government, the person responsible for paying the interest shall pay to the credit of the Government of India by remitting the amount to the Income-tax Officer concerned or to such officer as he may direct with a statement showing the following particulars:—

(*i*) Description of securities.
(*ii*) Numbers of securities.
(*iii*) Dates of securities.
(*iv*) Amounts of securities.
(*v*) Period for which interest is drawn.
(*vi*) Amount of interest, and
(*vii*) Amount of tax.

13. The certificate to be furnished under section 18 (9) of the Act by any person paying interest chargeable to income-tax on any security of the Government of India or of a local Government shall be in the following form :— **P. 61.**

Draft No. ([1])

Certified that Rs. being income-tax at the rate of pies per rupee has been deducted by draft of this date from Rs. being the amount of interest for Rs on ([2]) for Rs. standing in the name of for Rs.

([1]) This number also appears in the interest cages on the back of the Securities.
([2]) Name of Security.

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Superintendent or Principal Officer.

To be signed by claimant.

I hereby declare that the securities on which interest as above specified has been received were my own property and were in the possession of

at the time when income-tax was deducted.

Signature

Date

(*N.B* —The securities to be produced when required in support of any claim)

13-A. The certificate ([1]) to be furnished under section 18 (9) of the Act by the person paying any interest on debentures or other securities for money issued by or on behalf of a local authority or a company shall be in the following form :— **P. 61.**

Name of Local Authority/Company.
Address.
To ([2])
Name and address of payee ([3])

[illegible] der section 18 [illegible] he name and [illegible] ; the interest [illegible] en here. In the case of bearer debentures or bonds, these particulars are to be given as declared by the payee concerned

([3]) *To be completed only in the case of bearer debentures or bonds*

I/We hereby certify that Rs. being income-tax at the rate of pies per rupee has been deducted from Rs. being the amount of interest at the rate of per cent. per annum due (1) on debentures Nos. of Rs. each of the (2) and that it has been or will, within the prescribed period, be paid by me/us to the Government of India at

Superintendent, Public Debt Office,
or Principal Officer or Managing Agents.

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(To be signed by claimant.)

I hereby declare that the securities on which interest as above specified has been received, were my own property and were in the possession of at the time when income-tax was deducted.

Signature

Date

(*N.B.*—The securities to be produced when required in support of any claim.)

P. 63. 14. The certificate to be furnished by the principal officer of a company under section 20 shall be in the following form:—

(Name of Company)

(Address of Company)

Date.

Warrant for Rs. (in words and figures or, if the certificate is crossed by an entry in words stating that the amount of dividend is under the next multiple of Rs. 50

(1) The date on which interest is payable.

(2) Here enter the name of the local authority or the company.

above that amount, in figures only) , being dividend [1] at the rate of Rs. (in words and figures) per share for the [2] /the period from to during the year ending on the day of 19 , [3] on [4] shares in this Company, registered during the said period/on (Date) in the name of . This dividend was declared at the [5] meeting held on the [6] 193 .

I/We hereby certify that income-tax on the entire/such part as is liable to be charged to Indian Income-tax of the profits and gains of the Company, of which this dividend forms a part, has been, or will be duly paid by me/us to the Government of India

Signature

Office

(To be signed by the claimant)

I hereby certify that the dividend above mentioned relates to shares which were my own property at the time when the dividend was declared/during the period from to /on (Date) and were in the possession of

Signature

Date

15. The returns for Government officers under section 21 of the Act shall be prepared and submitted to the Income-tax Officer by:— P. 64.

(a) Civil Audit Officers for all gazetted officers and others who draw their pay from audit offices

---

[1] Or dividend and bonus

[2] Year or half-year, as the case may be

[3] Here enter whether free of income-tax or not

[4] Here enter number and description of shares

[5] Here specify number and nature of meeting.

[6] Here enter date.

on separate bills; and also for all pensioners who draw their pensions from audit offices.

(*b*) Treasury officers for all gazetted officers and others who draw their pay from treasuries on separate bills without countersignature; and also for all pensioners who draw their pensions from treasuries.

(*c*) Heads of Civil or Military offices for all non-gazetted officers whose pay is drawn on establishment bills or on bills countersigned by the head of office.

(*d*) Forest disbursing officers and Public Works Department disbursing officers in cases where direct payment from treasuries is not made, for themselves and their establishments.

(*e*) Head postmasters for (*i*) themselves, their gazetted subordinates and the establishments of which the establishment pay bills are prepared by them and (*ii*) gazetted supervising and controlling officers of whose headquarters post office they are in charge; Head Record Clerks, Railway Mail Service, for themselves and all the staff whose pay is drawn in their establishment pay bills; the Disbursing Officers in the case of the Administrative and the Audit offices.

(*f*) Controllers of Military Accounts (including Divisional Military Supply, Marine, Field and War Controllers) for all gazetted military officers under their audit.

(*g*) Disbursing officers in the Military Works Department for themselves and their establishments.

(*h*) Chief Examiners of Accounts or Chief Auditors of Railways concerned for all railway employés under their audit.

P. 64. 16. The minimum income under the head "Salaries" referred to in section 21 (*a*), shall be Rs. 1,000 per annum.

17. The return to be delivered to the Income-tax Officer under section 21 of the Act shall be in the following form:— **P. 64.**

Serial number.	Name of person.	Postal address or residence.	Appointment or nature of employment	Total amount of salary, wages, annuity or pension paid during the year ending on 31st March 19	House allowance or value of rent-free quarters	Amount of bonus, gratuity, fees, commission, perquisites or allowances (other than those shown in column (6) or profits in lieu of or in addition to salary or wages) each to be shown separately	Total of columns 5 6 and 6-A	Deduction on account of provident and other funds (proviso to section 7 (1))	Deduction on account of Life Insurance premia (section 15)	Net amount chargeable	Amount of tax payable	Reduction under section 17	Amount of tax deducted	If the employé contributes to a recognised provident fund (Chapter IX-A) the amount of the employer's contribution thereto.	Remarks
1	2	3	4	5	6	6-A	7	8	8-A	9	10	11	12	12 A	13

I certify that the above statement contains a complete list of the total amounts paid by   to all persons who were receiving income on the 31st day of March 19   at the rate of Rs. 1,000 per annum, or have received during the year ended on that day not less than Rs. 1,000 in respect of salary, wages, annuity, pension, gratuity, fees, commission, perquisites, or profits in lieu of or in addition to salary or wages, and that all the particulars stated are correct

Signature of person by whom the return is delivered

Date

P. 65. 18. (1) The return of total income of companies required under section 22 (1) shall be in the following form and shall be accompanied by a copy of the profit and loss account referred to therein :—

Total income of the company.

Income, profits, or gains as per profit and loss account for the year ended 19 . . . .

Add—Any amount debited in the accounts in respect of—

1. Reserve for bad debts . . . .
2. Sums carried to reserve for provident or other funds . .
3. Expenditure of the nature of charity or presents . . .
4. Expenditure of the nature of capital . . . . . .
5. Income-tax or Super-tax . . . .
6. Rental value of property owned and occupied . . .
7. Cost of additions to, or alteration, extensions, improvements of, any of the assets of the business . . . . . .
8. Interest on reserve or other funds . . . . . .
9. Losses sustained in former years . . . .
10. Losses recoverable under an insurance or contract of indemnity . . . .
11. Depreciation of any of the assets of the company . .
12. Expenses not incurred solely for the purpose of earning the profits . . . .

TOTAL Rs. .

Deduct—Any profits or income included in the accounts on account of—

(a) Interest (net amount) on securities taxed at source . .
(b) Interest on securities tax-free . . . . . .
(c) Dividends (net amount) from companies taxed in British India . . . .
*(d) Other items already taxed at source (specify details) . .

BALANCE Rs. .

If the company owns any property not occupied for the purposes of the business a statement in the form prescribed in Schedule A to rule 19 should be attached with particulars of the credit and debit on account of such property entered in the accounts.

Declaration.

I. the [Secretary; etc., (see section 2 (12) of the Act)] of the (name of Company) declare that the information against each head in this return is correctly given as shown in the books of the Company as also in the

* NOTE.—If any other deduction is to be claimed, please give particulars thereof in a separate letter to be forwarded with the return.

accounts which have been duly audited by the auditors of the Company and which have been adopted by the shareholders of the Company.

(*Signature*)

(*Designation*)

Dated *19* .

(*2*) The company shall also attach to the return a statement showing the sums charged in the accounts under the provisions of section 58-K (*2*)

19. The return of total income for individuals, firms, Hindu undivided families and other associations of individuals not being companies required under section 22 (*2*) shall be in the following form — P. 66.

Statement of total income during the previous year.

1	2	3
Sources of income.	Amount of profits or gains or *income during* the previous year	Tax already charged on the income
	Rs	Rs.
1. Salaries (including wages, annuity, pension gratuity, fees, commission, allowances, perquisites, including rent-free quarters), or profits received in lieu of, or in addition to salary or wages . [See note (1)]		
1-A The contributions made by an employer to the account in a recognised provident fund of the person making the return . . .		
1-B The interest accruing to the account mentioned in 1-A which is not exempt from income-tax [section 58-F (*2*)].		
2 Interest on securities (including debentures) already taxed . " (2)		
3. Interest on securities of the Government of India or of local Governments declared to be income-tax free . . . [See note (3)]		
4 Property as shown in detail in Schedule A . . " (4)		

Statement of total income during the previous year—contd.

1 Sources of Income.	2 Amount of profits or gains or income during the previous year.	3 Tax already charged on the income.
	Rs.	Rs.
5. Business, trade, commerce, manufacture, or dealings in property, shares or securities (details as in note 5) . . [See note (5)]		
6. Profession . . . „ (6)		
7. Dividends from Companies (net) . . . . . . „ (7)		
8. Interest on mortgages, loans, fixed deposits, current accounts, etc., not bearing income from business . .		
9. Ground rent . . .		
10. Any source other than those mentioned above including any income earned in partnership with others . . . „ (8)		
Total .		
Deductions claimed—		
(a) on account of insurance premia .		
(b) on account of contributions to a provident fund to which the Provident Funds Act applies . .		
(c) on account of contributions to a recognised provident fund [section 58-A (a)] .		
(d) others		

I declare that to the best of my knowledge and belief the information given in the above *statement* is *correct* and complete, that the amounts of income shown are truly stated and relate to the year ended and that no other income accrued or arose or was received by me/the firm/the family/the association during the said year and that I/the firm/the family/the association had during the said year no other sources of income.

Signature

Date

N.B.—(*a*) Income accruing to you outside British India received in *British India is liable to taxation, and must be entered by you in the form.*

(*b*) All income from whatever source derived must be entered in the *form*, including income received by you as a partner of a firm.

NOTE 1.—In column 2 should be shown the gross amount of salary and not the net amount after deduction on account of income-tax, provident funds, etc.

NOTE 2.—" Interest on securities " means the interest on promissory notes or bonds issued by the Government of India or a local Government, or the interest on debentures or other securities for money issued by or on behalf of a local authority or company Where income-tax has been deducted from the interest, or where the interest has been paid income-tax free, the amount [illegible] actually [illegible] of [illegible] est [illegible] der [illegible]

The interest on securities of the Government of India or of local Governments declared to be income-tax free should be shown under head 3. Those which are not declared to be income tax free should be included under this head.

Entries under this head must be supported by the certificate issued by the person or Company paying the interest under section 18 (9) of the Act.

NOTE 3 —(a) The income-tax payable on the interest receivable on a security of a Local Government issued income-tax free is payable by the local Government and not by the holder of the security

(b) Only the interest on securities of the *Government of India* or of a local Government declared to be income-tax free should be entered against this head. Such interest will not be charged to income-tax, but it must be included in the statement of total income in order to ascertain the rate of income-tax chargeable on other income *It is chargeable to super-tax*

(c) Particulars of any interest on securities issued by other authorities and stated to be free of income-tax should be entered against head 2, as income-tax on such interest is actually paid by these authorities on behalf of the recipients.

NOTE 4 —The tax is payable under this head in respect of the *bonâ fide* annual value of any buildings or lands appurtenant thereto of which you are the owner, *other than such portions of such buildings and lands as you may occupy for the purpose of your business*

SCHEDULE A.

Serial number.	Name of village or town where the property is situated	Name of mohalla or street and number of property, if any.	In the case of Municipalities the name of the person in whose name the property stands in the municipal registers	Where the property is occupied by owner or is let.	Annual letting value of the property.	Period during which the property remained vacant	Amount of rent actually received for the property, if let.	Deductions								Net amount to be carried over to the front of the form.
								Of one-sixth of the annual letting value shown in column 6	Premium paid to insure the property against damage or destruction	Interest on a mortgage or charge on the property	Ground rent paid for the property	Land revenue paid for the property	Collection charges paid	Amount claimed on account of property remaining vacant	Total of columns 8 to 13A	
1	2	3	4	5	6	6A	7	8	9	10	11	12	13	13A	14	15

NOTE 5.—(*a*) Where you keep your accounts on the mercantile accountancy or book profits system, you must file return in the following form:—

Income, profits or gains from business, trade, commerce.

	Rs.
Income, profits or gains as per Profit and Loss Account for the year ended 19 .	
Add.—Any amount debited in the accounts in respect of—	
1. Reserve for bad debts	
2. Sums carried to reserve for provident or other funds .	
3. Expenditure of the nature of charity or presents . .	
4. Expenditure of the nature of capital	
5. Income-tax or Super-tax	
6. Drawings or salary of proprietor or partners . . .	
7. Rental value of property owned and occupied . . .	
8. Cost of additions to, or alterations, extensions, improvements of any of the assets of the business . . .	
9. Interest on the proprietor's or partner's capital including interest on reserve, or other funds	
10. Losses sustained in former years	
11. Losses recoverable under an insurance or contract of indemnity	
12. Depreciation of any of the assets of the business . .	
13. Private or personal expenses and expenses not incurred solely for the purpose of earning the profits . . .	
TOTAL .	
Deduct.—Any profits included in the account already charged to Indian income-tax and the interest on securities of the Government of India or of local Governments declared to be income-tax free	
BALANCE .	

Signature of the person making the return.

Date 19 .

(*b*) Where you do not keep your accounts in such a form, you must file a statement showing how you arrive at the taxable profits, *i.e.*, showing details of the gross receipts and of the expenditure you propose to set against those receipts. No deductions are permissible on account of—

(*i*) Property owned and occupied by the owner of a business for the purposes of a business;

(*ii*) Additions to or alterations, extensions, or improvements of any of the assets of the business;

(*iii*) Interest on the capital of the proprietors or partners of the business;

(*iv*) Bad debts not actually written-off in the accounts;

(*v*) Losses sustained in previous years;

(*vi*) Reserves of any kind;

(*vii*) Sums paid on account of the income-tax or super-tax or any tax levied by a local authority other than local rates or municipal taxes in respect of the portion of the premises used for the purpose of the business,

(*viii*) Any expenditure of the nature of charity or a present,

(*ix*) Any expenditure of the nature of capital,

(*x*) Any loss recoverable under an insurance or a contract of indemnity;

(*xi*) Depreciation of any kind other than that specified in the Act;

(*xii*) Drawings or salaries of the proprietors or the partners;

(*xiii*) Private or personal expenses of the assessee,

(*xiv*) Any expenditure of any kind which is not incurred solely for the purpose of earning the profits

If you have included any such sums in your expenditure in your books, you must exclude them from the expenditure permissible for the purpose of arriving at your taxable profits.

(*c*) You are also required to attach a statement showing the sums charged in your accounts under the provisions of section 58-K (2)

NOTE 6 —The income, profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of such profession or vocation, provided that no allowance is made on account of any of your personal expenses Professional fees received by you in any part of India (whether within British India or not) must be included by you in your receipts

NOTE 7.—Income-tax chargeable on the profits of companies is paid by the companies, so that the dividends received by shareholders represent the net amount remaining after any income-tax due by the company has been paid. This amount should be entered in column 2 of the statement The proportionate tax will be added in the Income-tax Office.

If the rate of tax applicable to your total income is less than the rate of tax applicable to the profits or gains of the company at the time of the declaration of such dividends, you may, by attaching the company's certificate received with the dividends, have the excess collected on your dividends from the company set against the tax payable by you on your other income instead of having to apply separately for a refund

NOTE 8.—Agricultural income from land not paying land revenue or local rates to an authority in British India should be included under this head or under income from business according to circumstances

NOTE 9 —Deductions from total income can only be made for insurance premia in respect of insurance on your own life or on the life of your wife, or in respect of a contract for a deferred annuity on your own life or on the life of your wife. No deduction is permissible in the case of any other form of insurance except in the case of Hindu undivided families where deductions are permissible on account of premia paid in respect of insurance on the life of any male member of the family or of his wife The original receipt or the certificate of the insurance company to which the premium was paid must be attached to the return.

20. The Notice of Demand under section 29 shall be in the following form :— **P. 77.**

NOTICE OF DEMAND UNDER SECTION 29 OF THE INCOME-TAX ACT, 1922

To

1. You have been assessed for the year to income-tax amounting to Rs [in addition to which a

penalty of Rs. has been imposed], as shown in the copy of the assessment form sent herewith.

2. You have also been assessed to super-tax amounting to Rs. .

3. You are required to pay the amount of Rs. on or before the to at when you will be granted a receipt.

4. If you do not pay the tax on or before the date specified above, you will be liable to a penalty which may be as great as the tax due from you.

5. If you are dissatisfied with your assessment you may present an appeal under sub-section (*1*) of section 30 of the Indian Income-tax Act, 1922, to the Assistant Commissioner of Income-tax at

within 30 days from the receipt of this notice, on a petition duly stamped in the form prescribed under sub-section (*3*) of section 30 and verified as laid down in that form.

Or

The assessment has been made under sub-section (*4*) of section 23 of the Indian Income-tax Act, 1922, because you failed to make a return of your income under section 22/ to comply with a notice under sub-section (*4*) of section 22/ to comply with a notice under sub-section (*2*) of section 23, and no appeal lies. But if you were prevented by sufficient cause from making the return or did not receive the notice(s) aforesaid, or had not a reasonable opportunity to comply, or were prevented by sufficient cause from complying, with the terms of the notice(s), you may apply to me within one month from the receipt of this notice under section 27, to cancel the assessment and proceed to make a fresh assessment.

6. The appropriate chalan should be sent along with the amount paid. Should you lose the chalans attached to this notice of demand, it will be necessary for you to apply to the Income-tax Officer for copies of fresh chalans.

Dated *19* .

Income-tax Officer.

Place

NOTE.—The superfluous words in paragraph 5 should be deleted.

ASSESSMENT FORM.

ASSESSMENT FOR 193 -193 UNDER SECTION , ACT XI OF 1922.

District or Area.

Name of assessee   Number in General Index
Address   Number of miscellaneous record

Serial No.	Detailed sources of income.	Amount of income.	Tax deducted at source.		Remarks
		Rs	Rs.	A.	
1	Salary (including employee's provident fund contributions).				
1A	Annual accretion (less employee's provident fund contribution) under section 58A(*f*)				
2	Interest on securities .				
3	Property				
4	Business				
5	Profession				
6	Other sources				

	Rs	A.	Rs.	A.
(*i*) Total income				
(*ii*) Deduction under section 7 (*i*) or on account of provident fund, to which the Provident Fund Act, 1897, applies.				
(*iii*) Deduction on account of recognised provident fund— (*a*) Contributions . . . . (*b*) Exempted interest				
(*iv*) Deduction on account of insurance premia . .				
(*v*) Deduct sums received as dividends or from a firm the profits of which have been charged to income-tax.				
(*vi*) Deduct amount of interest from tax-free securities of the Government of India or of a local Government.				
(*vii*) Income now to be subjected to income-tax . .				
(*viii*) Rate applicable. ... . pies per rupee .				
(*ix*) Amount of income-tax				

	Rs.	A.	Rs.	A.
(x) Deduction under section 17				
(xi) Amount of deductions at source from salary or interest on securities for which credit is given under section 18 (5).				
(xii) Abatement on account of dividends (at.............. pies per rupee).				
(xiii) Abatement on account of income from a registered firm (at..............pies per rupee).				
(xiv) Net amount of income-tax (or refund) . . .				
(xv) Amount of super-tax				
(xvi) Penalty under section 28 or section 25 (2) . .				
(xvii) Total sum payable (or to be refunded)—in figures as well as in words).				
Rupees....................				
annas.....				

Dated 193 .

Income-tax Officer.

Classification of demand.

Serial No.	Classification.	Amount of tax.	
		Rs.	A.
1	Salaries—		
	(a) Paid by Government		
	(b) ,, a local authority		
	(c) ,, companies, other bodies and associations .		
	(d) ,, private employers		
2	*Interest on securities—		
	(a) on securities of the Government of India . .		
	(b) ,, ,, local Governments . .		
	(c) on debentures and other securities of a local authority or company.		
3	Income derived from property		
4	,, ,, ,, business		
5	Professional earnings		
6	Income derived from other sources		
	Total .		
	Deduction on account of section 7 (i), 15 or 58F . .		
	Deduction on account of section 17		
	Total of refunds and rebates as in the classification cage below.		
	Penalty under section 25 (2)		
	,, ,, ,, 28		
	Net demand (or refund)		

* Where the result of an assessment is an abatement the sum allowed as a refund or rebate should be entered in the classification cage below.

*Classification of refunds and rebates.

Source of income.	Rate of refund or rebate.	Amount of refund or rebate.	
		Rs.	A.

* Items (xii) and (xiii) on pre-page and abatement regarding securities.

Record of cash refunds.

Date of issue of notice of demand.					
	Number of voucher . .				
	Date of voucher . .				
	Amount of refund . .				
	Reason for refund . .				

† Return.

N=Not submitted.

A=Submitted and accepted

R=Submitted, but assessment not based on it.

† Accounts.

N=Not submitted

A=Submitted and accepted.

R=Submitted, but assessment not based on them.

† NOTE.—For the purpose of compiling Annual Return No VIII, I. T. Os should invariably strike out the inapplicable entries.

P. 78. 21. An appeal under section 30 shall, in the case of an appeal against a refusal of an Income-tax Officer to make a fresh assessment under section 27, be in Form A; in the case of an appeal against an order of an Income-tax Officer under section 25 (*2*) in Form C; in the case of an appeal against an order of an Income-tax Officer under section 28 in Form D and in other cases in Form B.

FORM A.

Form of appeal against an order refusing to reopen an assessment under section 27.

To

The Assistant Commissioner of

The day of 19 .

The petition of of post office, District sheweth as follows:—

1. Under the Indian Income-tax Act, 1922, your petitioner has been assessed on the sum of Rs. for the year commencing the 1st day of April 19 .

2. Your petitioner was prevented by sufficient cause from making the return required by section 22 or did not receive the notice issued under sub-section (*4*) of section 22, or sub-section (*2*) of section 23, or had not a reasonable opportunity to comply or was prevented by sufficient cause from complying with the terms of the notice under sub-section (*4*) of section 22 or sub-section (*2*) of section 23, as more particularly specified in the statement attached.

3. Your petitioner therefore presented a petition to the Income-tax Officer under section 27, requesting him to cancel the assessment. This petition, the Income-tax Officer, by his order dated of which a copy is attached, has rejected.

4. Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and that he may be directed to make a fresh assessment in accordance with the law.

Signed

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein and in the above statement of facts is true to the best of my information and belief.

Signed

FORM B

Form of appeal against assessment to Income-tax.

To

The Assistant Commissioner of

The day of 19 .

The petition of of post office, District sheweth as follows —

1. Under the Indian Income-tax Act, 1922, your petitioner has been assessed on the sum of Rs. for the year commencing the 1st day of April 19 . The notice of demand attached hereto was served upon him on .

2. Your petitioner's income accruing or arising or received or deemed under the provisions of the Act to accrue or arise or to be received in British India for the year ending the day of 19 amounted to Rs. .

3. Such income and profits actually accrued or arose or were received during the period of months and days.

4. During the said year your petitioner had no other income or profits.

5 Your petitioner has made a return of his income to the Income-tax Officer under section 22, sub-section (*2*) of the Act and has complied with all the terms of the notice served on him by the Income-tax Officer under section 23 (*2*), and/or [section 22 (*4*)]

Your petitioner therefore prays that he may be assessed accordingly (or that he may be declared not to be chargeable under the Act).

Signed

GROUNDS OF APPEAL.

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed

FORM C.

Form of appeal against an order under section 25 (2).

To

The Assistant Commissioner of Income-tax.

The day of 19 .

The petition of of post office, District sheweth as follows:—

1. Under section 25 (2) of the Indian Income-tax Act, 1922, a penalty of Rs. has been imposed on your petitioner. The notice of demand attached hereto was served upon him on .

2. Your petitioner was prevented by sufficient cause as more particularly explained below from giving notice within the time prescribed by section 25 (2) to the Income-tax Officer of the discontinuance of his business, profession or vocation.

3. Your petitioner therefore requests that the order of the Income-tax Officer imposing a penalty of Rs. upon your petitioner may be set aside.

Signed

STATEMENT OF FACTS.

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein and in the above statement of facts is true to the best of my information and belief.

Signed

FORM D.

Form of appeal against an order under section 28.

To

The Commissioner of Income-tax/The Assistant Commissioner of Income-tax,

The day of 19 .

The petition of of post office, District, sheweth as follows —

1. *Under section* 28 *of the Indian Income-tax Act*, 1922, a penalty of Rs. has been imposed on your petitioner by the Income-tax Officer/Assistant Commissioner. The notice of demand attached hereto was served upon him on .

2. Your petitioner did not conceal the particulars of his income or deliberately furnish inaccurate particulars thereof but as will be seen from the statement of facts attached returned it at its real amount to the best of his knowledge and belief.

3. Your petitioner therefore requests that the order of the Income-tax Officer/Assistant Commissioner imposing a penalty of Rs. upon your petitioner may be set aside.

Signed

STATEMENT OF FACTS.

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed

22. An appeal under section 32 (2) shall in the case of an appeal against an order of an Assistant Commissioner under section 28 be in Form D attached to Rule 21 and in other cases in Form E. **P. 80.**

FORM E.

To

The Commissioner of Income-tax,

The day of 19 .

The petition of sheweth as follows:—

1. Under section 31 (3) of the Indian Income-tax Act, 1922, the Assistant Commissioner of has increased the tax payable by your petitioner from Rs. to Rs. .

2. Your petitioner prays that the enhancement may be set aside or reduced to Rs. for the reasons stated below.

Signed

GROUNDS OF APPEAL.

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed

22-A. An appeal to the Commissioner for a reference to a Board of Referees shall, in cases falling under sub-section (1) of section 23-A, be in Form F, and, in cases falling under sub-section (2) of section 23-A, be in Form G.

FORM F.

To

The Commissioner of Income-tax,

The day of 19 .

The petition of sheweth as follows:—

1. The Income-tax Officer of , with the previous approval of the Assistant Commissioner of has passed an order dated of which a copy is attached under sub-section (1) of section 23-A of the Indian Income-tax Act, 1922, that the sum payable as income-tax by the firm/association known as

shall not be determined and that the share of your petitioner in the profits and gains of the said firm/association shall be included in his total income for the purpose of assessment; and a notice of the said order has been served upon your petitioner on the day of

2 Your petitioner, being aggrieved, for the reasons stated below, by the order of the Income-tax Officer, prays that the said order may be set aside.

Signed

GROUNDS OF APPEAL

Form of verification

I, , the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief

Signed

FORM G.

To

The Commissioner of Income-tax,

The day of 19 .

The petition of sheweth as follows :—

1. The Income-tax Officer of , with the previous approval of the Assistant Commissioner of has passed an order dated of which a copy is attached under sub-section (*2*) of section 23-A of the Indian Income-tax Act, 1922, that the sum payable as income-tax by the company known as the shall not be determined and that the proportionate share of your petitioner in the profits and gains of the said company shall be included in his total income for the purpose of assessment, and a notice of the said order has been served upon your petitioner on the day of .

2 Your petitioner, being aggrieved, for the reasons set out below, by the order of the Income-tax Officer, prays that the said order may be set aside.

Signed

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed

P. 2. 23. (1) In the case of income derived in part from agriculture and in part from business an assessee shall be entitled to deduct from such income the market value of any agricultural produce raised by him or received by him as rent in kind which he has utilized as raw material for the purposes of his business or the sale receipts of which are included in the accounts of his business. The balance of such income shall be deemed to be income derived from the business and no further deduction shall be made therefrom in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent in kind.

P. 2. (2) For the purposes of sub-rule *(1)* " market value " shall be deemed to be :—

(*a*) where agricultural produce is originally sold in the market in its raw state, or after application to it of any process ordinarily employed by a cultivator or receiver of rent in kind to render it fit to be taken to market, the value calculated according to the average price at which it has been so sold during the year previous to that in which the assessment is made.

(*b*) where agricultural produce is not ordinarily sold in the market in its raw state, the aggregate of—

(1) the expenses of cultivation;

(2) the land revenue or rent paid for the area in which it was grown; and

(3) such amount as the Income-tax officer finds, having regard to all the circumstances in each case, to represent a reasonable rate of profit on the sale of the produce in question as agricultural produce.

Income derived from the sale of tea grown and actured by the seller in British India shall be compu- if it were income derived from business, and 40 it. of such income shall be deemed to be income, pro- l gains liable to tax.

In the case of Life Assurance Companies incor- l in British India whose profits are periodically as- ed by actuarial valuation, the income, profits and of the Life Assurance Business shall be the average net profits disclosed by the last preceding valuation, ed that any deductions made from the gross income ving at the actuarial valuation which are not admis- or the purpose of income-tax assessment, and any income-tax deducted from or paid on income l from investments before such income is received, e added to the net profits disclosed by the valuation P. 107.

Rule 25 shall apply also to the determination of the , profits and gains derived from the annuity and l redemption business of life assurance companies, ofits of which can be ascertained from the results of uarial valuation. P. 107.

If the Indian income-tax deducted from interest investments of a company exceeds the tax on the , profits and gains thus calculated, a refund may be ted of the amount by which the deduction from st on investments exceeds the tax payable on such , profits and gains P. 107.

In the case of other classes of insurance business narine, motor car, burglary, etc) of a company in- ated in British India, the income, profits or gains e determined in accordance with the provisions of t, subject to the allowance specified in the rule next ing. P. 107.

. If in the ordinary accounts of any insurance busi- ther than Life Assurance, Annuity, or Capital Re- ion Business carried on by an *Insurance Company* mount is actually charged against the receipts for le purpose of forming a reserve to meet outstanding ties or unexpired risk in respect of policies which een issued (including risk of exceptional losses) and used for any other purpose such amount may be d as expenditure incurred solely for the purpose of ig the profits of the business. P. 107.

P. 107. 30. Any amount either written-off in the accounts or through the Actuarial Valuation Balance Sheet to meet depreciation of, or loss on, securities or other assets, or which is carried to a reserve fund formed for that sole purpose and not used for any other purpose, may be treated as expenditure incurred solely for the purpose of earning the profits of the business. Any sums taken credit for in the accounts or Actuarial Valuation Balance Sheet on account of appreciation of or gains on the securities or other assets shall be deemed to be income chargeable to tax, subject always to deduction of such portion thereof as has been otherwise taken into account in calculating the income, profits or gains.

P. 107. 31. The income, profits and gains of companies carrying on Dividing Society or Assessment business shall be taken at 15 per cent. of the premium income in the previous year and, in the case of non-resident companies, at 15 per cent. of the Indian premium income in the previous year.

P. 107. 32. Notwithstanding anything contained in rules 25 to 31, the total income, however, of an insurance company carrying on more than one class of business shall be determined by its aggregate income from all classes of businesses.

P. 187. 33. In any case in which the Income-tax Officer is of opinion that the actual amount of the income, profits or gains accruing or arising to any person residing out of British India whether directly or indirectly through or from any business connection in British India cannot be ascertained, the amount of such income, profits or gains for the purposes of assessment to income-tax may be calculated on such percentage of the turnover so accruing or arising as the Income-tax Officer may consider to be reasonable, or on an amount which bears the same proportion to the total profits of the business of such person (such profits being computed in accordance with the provisions of the Indian Income-tax Act) as the receipts so accruing or arising bear to the total receipts of the business, or in such other manner as the Income-tax Officer may deem suitable.

P. 87. 34. The profits derived from any business carried on in the manner referred to in section 42 (*2*) of the Act may be determined for the purposes of assessment to income-tax according to the preceding rule.

35. The total income of the Indian branches of non-resident insurance companies (Life, Marine, Fire, Accident, Burglary, Fidelity Guarantee, etc.), in the absence of more reliable data, may be deemed to be the proportion of the total income, profits or gains, of the companies, corresponding to the proportion which their Indian premium income bears to their total premium income. P. 87, 107.

36. In the case of a person resident in British India, an application for a refund of income-tax under section 48 of the Act shall be made in the following form :— P. 92.

Application for refund of income-tax

I, of
do hereby state that my total income computed in accordance with section 16 of the Indian Income-tax Act, XI of 1922, accruing or arising or received in British India, or deemed under the Act to accrue or arise or to be received in British India, during the year ending on the 31st March 19 , amounted to Rs only.

I therefore pray for a refund of

Rs. under " Salaries " (The portion not required should be scored out)

Rs. under " Securities ".

Rs. under " Dividends from companies ".

Rs. under " Share of profits of the registered firm " known as of which I am a partner.

Signature

I hereby declare that I am resident in British India, and that what is stated in this application is correct.

Dated *19* .

Signature

36-A. In the case of a person not resident in British India, an application for a refund of income-tax under section 48 of the Act shall be made in the following form :— P. 92.

Application for refund of income-tax.

I, of
residing at in (country)
do hereby state that my total income computed in accord-

ance with section 48 (*4*) of the Indian Income-tax Act, 1922, during the year ending on the 31st March 19 , amounted to Rs. only, as per return enclosed.

I therefore pray for a refund of

(The portion not required should be scored out.)

Rs. under "Salaries".

Rs. under "Securities".

Rs. under "Dividends from companies".

Rs. under "Share of profits of the registered firm" known as of which I am a partner.

Signature

I hereby declare that I am a British subject. (See note 2)/subject of State being a State in India. I also declare that what is stated in this application is correct.

Dated *19* .

Signature

Sworn before me (Name)
Designation Signature at on



NOTE 1.—The above declaration shall be sworn (*a*) before a Justice of the Peace, a Notary Public or Commissioner of Oaths if the applicant for refund resides in any part of His Majesty's Dominions outside British India, (*b*) before a Magistrate or other official of the State or a Political Officer if he resides in a State in India, (*c*) before a British Consul if he resides elsewhere.

NOTE 2.—"British subject" means a person who is a natural-born British subject, or a person to whom a certificate of naturalization has been granted.

(*b*) An application for such a refund from a person not resident in British India who has made a similar application as a non-resident in the preceding year shall, unless the Income-tax Officer directs in any particular case that

application be made in the form prescribed in sub-rule
be made in the following form :—

Application for refund of income-tax

I, of residing at (country) do hereby state that my total ıme computed in accordance with section 48 (4) of the ian Income-tax Act, 1922, during the year ending on 31st March 19 , amounted to Rs. only, as per ırn enclosed.

I therefore pray for a refund of

Rs. under " Salaries "

Rs. under " Securities ".

Rs under " Dividends from companies "

Rs. under " Share of profits of the registered firm " known as of which I am a partner.

The portions not required should be scored out.

Signature

I hereby declare that I am a British subject (see e)/subject of State being a State in India. I declare that what is stated in this application is cor- ; and that I duly applied for a similar refund as a non- dent last year.

ed *19* .

Signature

ote.—" British subject " means a person who is a natural-born British ct, or a person to whom a certificate of naturalization has been granted

37. The application under rule 36 shall be accompanied a return of total income in the form prescribed under ion 22 unless the applicant has already made such a ırn to the Income-tax Officer. P. 92.

37-A. The application under Rule 36-A shall be accom- ied by a return of total income in the following form details of Part I of which but not the total may be

omitted if the person has already submitted a return under section 22 (*2*) for the same year :—

Part I.

Statement of total income accruing or arising or received in British India, or deemed under the Act to accrue or arise or to be received in British India, during the previous year.

1 Sources of income.		2 Amount of profits or gains or income during the previous year.	3 Tax already charged on the income.
		Rs. A.	Rs. A.
1. Salaries (including wages, annuity, pension, gratuity, fees, commission, allowances, perquisites, including rent-free quarters) or profits received in lieu of, or in addition to, salary or wages	(See Note 1)		
1-A. The contributions made by an employer to the account in a recognised provident fund of the person making the return			
1-B. The interest accruing to the account mentioned in 1-A which is not exempt from income-tax [Section 58-F (2)]			
2. Interest on securities (including debentures) already taxed .	(See Note 2)		
3. Interest on securities of the Government of India or of local Governments declared to be income-tax free	(See Note 3)		
4. Property as shown in detail in Schedule A	(See Note 4)		
5. Business, trade, commerce, manufacture, or dealings in property, shares or securities (details as in note 5)	(See Note 5)		
6. Profession	(See Note 6)		
7. Dividends from companies . .	(See Note 7)		
8. Interest on mortgages, loans, fixed deposits, current accounts, etc., not being income from business			
9. Ground rent			
10. Any source other than those mentioned above including any income earned in partnership with others	(See Note 8)		
	Total .		

PART II.

Statement of total income, profits and gains in the previous year, arising, accruing or received out of British India, which, if arising, accruing or received in British India, would be included in the computation of total income under section 16.

Name of Country.	Sources of income	Amount of profits or gains or income during the previous year
		Rs.
	1. Salaries . . . . . (See Note 10)	
	*	
	2 Securities . . . (See Note 11)	
	*	
	3. Property . . . (See Note 12)	
	*	
	4. Business . . . . . . (See Note 13)	
	*	
	5. Profession . . . . . . (See Note 14)	
	*	
	6. Dividends from companies . (See Note 15)	
	*	
	7 *Interest on securities other than* in item 2 above, mortgages, loans, fixed deposits, current accounts, etc, not being income from business . . (See Note 16)	
	*	
	8 Ground rent	
	*	
	9 Any source other than those *mentioned above including any* income earned in partnership with others . . . . (See Note 17)	
	Total .	
	Total as per Part I	
	Total as per Part II	
	Grand total	

* The figures for each country should be separately shown.

Verification.

I declare that to the best of my knowledge and belief the information given in the above statement is correct and complete, that the amounts of income shown are truly stated and relate to the year ended and that no other income accrued or arose or was received by me/the firm during the said year and that I/the firm have no other sources of income.

Signature

Dated *19* .

N.B.—(*a*) Income accruing to you outside British India received in British India, should be entered in Part I and not in Part II.

(*b*) All income from whatever source derived must be entered in the form including income received by you as a partner of a firm.

(*c*) "Previous year" means the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said 12 months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up.

NOTE 1.—In column 2 should be shown the gross amount of salary and not the net amount after deductions on account of income-tax, provident funds, etc.

NOTE 2.—"Interest on securities" means the interest on promissory notes or bonds issued by the Government of India or a local Government, or the interest on debentures or other securities for money issued by or on behalf of a local authority or company. Where income-tax has been deducted from the interest, or where the interest has been paid income-tax free, the amount of tax so deducted or paid should be added to the amount of interest actually received, and the gross amount so arrived at should be entered in column 2 of the statement. The term "interest on securities" does not include interest on fixed deposits or mortgages or other loans, which have to be shown under heading 8.

The interest on securities of the Government of India or of local Governments declared to be income-tax free should be shown under head 3. Those which are not declared to be income-tax free should be included under this head.

Entries under this head must be supported by the certificate issued by the person or company paying the interest under section 18 (9) of the Act.

NOTE 3.—(*a*) The income-tax payable on the interest receivable on a security of a local Government issued income-tax free is payable by the local Government and not by the holder of the security.

(*b*) Only the interest on securities of the Government of India or of a local Government declared to be income-tax free should be entered against this head. Such interest will not be charged to income-tax but it must be included in the statement of total income in order to ascertain the rate of income-tax chargeable on other income. *It is chargeable to super-tax.*

(*c*) Particulars of any interest on securities issued by other authorities and stated to be free of income-tax should be entered against head 2, as income-tax on such interest is actually paid by these authorities on behalf of the recipients.

NOTE 4—The tax is payable under this head in respect of the *bona fide* annual value of any buildings or lands appurtenant thereto, of which you are the owner, other than such portions of such buildings and lands as you may occupy for the purpose of your business

SCHEDULE A.

Serial number.	Name of village or town where the property is situated.	Name of street and number of property.	In the case of municipalities the name of the person in whose name the property stands in the *municipal registers.*	Whether the property is occupied by owner or is let.	Annual letting value of the property.	Period during which the property remained vacant.	Amount of rent actually received for the property if let	Deductions. One-sixth of the annual letting value shown in column 6	Premium paid to insure the property against damage or destruction.	Interest paid on a mortgage or charge on the property	Ground rent paid for the property	Land revenue paid for the property.	Collection charges paid.	Amount claimed on account of property remaining vacant.	Total of columns 8 to 13 and 13A	Net amount to be carried over to the front of the form.
1	2	3	4	5	6	6A	7	8	9	10	11	12	13	13A	14	15

NOTE 5.—(*a*) Where you keep your accounts on the mercantile accountancy or book profits system, you must file a return in the following form.—

Income, profits or gains from business, trade, commerce.

	Rs	A.
Income, profits or gains as per Profit and Loss Account for the year ended 19 .		
Add—Any amount debited in the accounts in respect of—		
1. Reserve for bad debts . . .		
2 Sums carried to reserve for provident or other funds		
3. Expenditure of the nature of charity or presents .		
4. Expenditure of the nature of capital . .		
5. Income-tax or Super-tax		
6 Drawings or salary of proprietor or partners .		
7. Rental value of property owned and occupied .		
8. Cost of additions to, or alterations, extensions, improvements of, any of the assets of the business		

	Rs.	A.
Add—Any amount debited in the accounts in respect of—		
9. Interest on the proprietor's or partner's capital, including interest on reserve or other funds.		
10. Losses sustained in former years		
11. Losses recoverable under an insurance or contract of indemnity.		
12. Depreciation of any of the assets of the business .		
13. Private or personal expenses and expenses not incurred solely for the purpose of earning the profits.		
TOTAL .		
Deduct—Any profits included in the account already charged to Indian Income-tax and the interest on securities of the Government of India or of local Governments declared to be Income-tax free.		
Balance .		

(Signature of the person making the return.)

Dated 193 .

(*b*) Where you do not keep your accounts in such a form, you must file a statement showing how you arrive at the taxable profits, *i.e.*, showing details of the gross receipts and of the expenditure you propose to set against those receipts. No deductions are permissible on account of—

(*i*) Property owned and occupied by the owner of a business for the purposes of a business;

(*ii*) Additions to, or alterations, extensions, or improvements of, any of the assets of the business;

(*iii*) Interest on the capital of the proprietors or partners of the business;

(*iv*) Bad debts not actually written off in the accounts;

(*v*) Losses sustained in previous years;

(*vi*) Reserves of any kind;

(*vii*) Sums paid on account of the income-tax or super-tax or any tax levied by a local authority other than local rates or municipal taxes in respect of the portion of the premises used for the purpose of the business;

(*viii*) Any expenditure of the nature of charity or a present;

(*ix*) Any expenditure of the nature of capital;

(*x*) Any loss recoverable under an insurance or a contract of indemnity;

(*xi*) Depreciation of any kind other than that specified in the Act;

(*xii*) Drawings or salaries of the proprietors or the partners;

(*xiii*) Private or personal expenses of the assessee;

(*xiv*) Any expenditure of any kind which is not incurred solely for the purpose of earning the profits.

If you have included any such sums in your expenditure in your books, you must exclude them from the expenditure permissible for the purpose of arriving at your taxable profits.

(c) You are also required to attach a statement showing the sums charged in your accounts under the provisions of section 58-K (2)

NOTE 6 —The income, profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of such profession or vocation, provided that no allowance is made on account of any of your personal expenses. Professional fees received by you in any part of India (whether within British India or not) must be included by you in your receipts

---

NOTE 7.—Income

companies, so that

amount remaining t

This amount should

tionate tax will be added in the Income-tax office

If the rate of t

income-tax applic.

the declaration of

ficate received wit

from the company set against the tax payable by you on your other income instead of having to apply separately for a refund

Where a company derives a part of its profits in British India and part outside British India, such portion of its dividend as is payable out of profits taxable in British India should be shown in Part I under item 7 and the balance in Part II under item 6

NOTE 8 —Agricultural income from land not paying land revenue or local rates to an authority in British India should be included under this head or under income from business according to circumstances

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NOTE 9 —Rebates in respect of insurance premia or of a contract for annuity cannot be allowed in connection with a claim for refund They can only be allowed in the course of an assessment

---

NOTE 10 —The gross amount of salary and not the net amount after deductions on account of income-tax, should be shown

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principal place of business is situate in British India or not, which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act". Interest on all other securities should be shown under item 7—see Note 16 Interest should be shown gross if foreign tax is deducted therefrom after the assessee receives the interest, if the tax is deducted at source, the net interest received should be shown

NOTE 12.—See instructions in Note 4.

NOTE 13.—The details should be given as explained in Note 5, but there will be no "deduct" entry on account of profits included in the amount already charged to Indian income-tax and the interest on securities of the Government of India or a local Government in India declared to be income-tax free.

NOTE 14.—This should show professional fees received outside British India.

NOTE 15.—The figure to be shown here is the amount actually received by the shareholder irrespective of whether the dividends are declared free of tax or not.

Where a company derives a part of its profits in British India and part outside British India, such portion of its dividend as is payable out of profits taxable in British India should be shown in Part I under item 7 and the balance in Part II under item 6.

NOTE 16.—This head will include *inter alia* interest on all securities other than those entered in item 2, see Note 11. Interest should be shown gross if foreign tax is deducted therefrom after the assessee receives the interest; if the tax is deducted at source, the net interest received should be shown.

NOTE 17.—Agricultural income from land not included in Part I should be shown under this head.

P. 92. 38. Where the application under rule 36 or rule 36-A is made in respect of interest on securities or dividends from companies, the application shall be accompanied by the certificate prescribed under section 18 (*9*) or section 20, as the case may be.

P. 92. 39. The application under rule 36 or rule 36-A shall be made as follows:—

(*a*) If the applicant is resident in British India, to the Income-tax Officer of the District in which the applicant is chargeable directly to income-tax, or if he is not chargeable directly to the Income-tax Officer of the district in which he ordinarily resides:

(*b*) If the applicant is resident outside British India, to the Income-tax Officer appointed by the Central Board of Revenue.

40. An *application for refund* of income-tax under P. 93.
ection 49 of the Act shall be made in the following form :—

pplication for relief from double income-tax under section 49 of the Indian Income-tax Act, 1922.

I, of , do hereby state
at I have paid United Kingdom income-tax and super-
x amounting to £ for the year ending 19
n an income of £ and that Indian income-tax/in-
me-tax and super-tax of Rs. has also been paid
n the same income/income from the same source amounting
Rs. . I have obtained relief under the provi-
ons of section 27 of the English Finance Act, 1920, at the
ate of see attached certificate from the
nspector of Taxes I now pray for a further relief at
e rate of amounting to Rs under
ection 49 of the Indian Income-tax Act, 1922, to which I
m entitled. My income from all sources to which this
ct applies during the "previous year" ending on the
19 amounted to Rs.
nly—*see* Return of income attached/already submitted.

Signature

I hereby declare that what is stated herein is correct.

Signature

ated *19* .

41. The application under rule 36 or rule 40 may be
resented by the applicant in person or through a duly
uthorized agent or may be sent by post.

42. A return shall be furnished by the principal officer
f a Company under section 19-A in respect of a dividend
r aggregate dividends if the amount thereof exceeds
s. 5,000

43. The return by the principal officer of a Company
nder section 19-A shall be in the following form and shall

be delivered to the Income-tax Officer who assesses the company:—

Return under section 19-A of the Indian Income-tax Act, 1922, for the year 1st April 19 -31st March 19 .

Name of Company
Address of Company

(1) Resident Shareholders/Non-Resident Shareholders.

Serial number.	Name of shareholder.	Address of shareholder.	Date of declaration of dividends.	(2) Amount of dividends.	
				Net.	Gross.
1	2	3	4	5	6
				Rs.	Rs.

I, the principal officer of the Company, hereby certify that the above statement contains a complete list of the resident/non-resident shareholders of the Company to whom a dividend or aggregate dividends exceeding Rs. 5,000 was or were distributed in the period from the 1st April 19 to the 31st March 19 .

Dated *19* .

Signature

NOTE 1.—Separate forms should be used for resident and non-resident shareholders.

NOTE 2.—Where dividends are issued "free of income-tax", the figure to be entered in column 5 is the sum actually paid, and the figure to be entered in column 6 is the aggregate of the sum so paid and the amount of income-tax payable by the Company in respect of the dividends.

P. 92. 44. All sums deducted in accordance with sub-sections (*2*) and (*3*) of section 57 shall be paid by the person making the deduction to the credit of the Government of India

within one week from the date of such deduction by remitting the amount to the Income-tax Officer concerned or to such Government Treasury or branch of the Imperial Bank of India as he may direct The person making the deduction shall send at the same time to the Income-tax Officer a statement showing the name of the non-resident person on whose behalf the tax has been deducted, the amount of the tax deducted, the gross amount of dividend in respect of which the deduction has been made and the period for which the dividend has been paid

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FINANCE DEPARTMENT (CENTRAL REVENUES).

Notification No. 9, dated the 15th March, 1930

In exercise of the powers conferred by Chapter IXA of the Indian Income-tax Act, 1922 (XI of 1922), the Governor General in Council is pleased to make the following rules, the same having been previously published as required by sub-section (*1*) of section 58-L read with sub-*section* (*4*) *of section 59 of the said Act* —

1. These rules may be called the Indian Income-tax *(Provident Funds Relief) Rules.*

2. In these rules, "section" means a section of the *Indian Income-tax Act, 1922 (XI of 1922).*

3. The contributions made by employees after the date *of recognition of a provident fund and the interest on the* accumulated balances of such contributions shall be wholly invested in securities of the nature specified in clause (*a*), (*b*), (*c*), (*d*) or (*e*) of section 20 of the Indian Trusts Act, 1822, and payable both in respect of capital and of interest *in British India.*

4. (*1*) Withdrawals by employees shall not be allowed *by the trustees except on special grounds in the following* circumstances or circumstances of a similar nature—

(*a*) *to pay expenses* incurred in connection with the illness of a subscriber or a member of his family;

(*b*) to pay for the passage over the sea of a subscriber or any member of his family;

(*c*) to pay expenses in connection with marriages, funerals or ceremonies which by the religion of the subscriber it is incumbent upon him to perform and in connection with which it is obligatory that expenditure should be incurred;

(*d*) to meet the expenditure on building or purchasing a house or a site for a house provided that such house or site is assigned to the trustees of the fund;

(*e*) to pay premia on policies of insurance on the life of the subscriber or of his wife provided that the policy is assigned to the trustees of the fund and that the receipts granted by the insurance company for the premia are from time to time handed over to the trustees for inspection by the Income-tax Officer.

(*2*) For the purposes of sub-rule (*1*) " Family " means any of the following persons who reside with and are wholly dependent on the employee, namely:—the employee's wife, legitimate children, step children, parents, sisters and minor brothers.

(*3*) No such withdrawal shall exceed (*1*) the pay of the employee for three months, or, in the case of a withdrawal for the purpose specified in clause (*d*) of sub-rule (*1*), six months at the time when the advance is granted, or (*2*) the total of the accumulation of exempted contributions and exempted interest contained in the balance to the credit of the employee whichever is less.

(*4*) A second withdrawal shall not be permitted until the sum first withdrawn has been fully repaid.

5. (*1*) Where a withdrawal is allowed for a purpose specified in clause (*d*) or clause (*e*) of sub-rule (*1*) of rule 4 the amount withdrawn need not be repaid.

(*2*) Where a withdrawal is allowed for any other purpose the amount withdrawn shall be repaid in not more than twenty-four equal monthly instalments and shall bear interest in accordance with rule 6 and no further withdrawal shall be permitted until repayment has been effected in full.

6. In respect of withdrawals which are repaid in not more than 12 monthly instalments, an additional instal-

ment of 4 per cent. of the amount withdrawn shall be paid on account of interest; and in respect of withdrawals which are repaid in more than 12 monthly instalments two such instalments of 4 per cent. of the amount withdrawn shall be paid on account of interest:

Provided, however, that at the discretion of the Trustees of the Fund, interest may be recovered on the amount withdrawn or the balance thereof outstanding from time to time at 1 per cent above the rate which is payable for the time being on the balance in the fund at the credit of the member.

7. The employer shall deduct such instalments from the employee's salary, and pay them to the Trustees. The deductions *shall* commence from the second monthly payment made after the withdrawal or in the case of an em*ployee on leave without pay from the second monthly pay*ment made after his return to duty

8. *In case of default of repayment of instalments* under rules 6 and 7, the Commissioner of Income-tax may at his discretion order that the amount of the withdrawal or the amount outstanding shall be added to the total income of the employee for the year in which the default occurs and the Income-tax Officer shall assess the employee accordingly.

9. Notwithstanding anything contained in rules 4 to 8, it shall be open to the trustees of a recognised provident fund to permit the withdrawal of ninety per cent of the amount standing at the credit of an employee if the employee takes leave preparatory to retirement, provided that *if he rejoins duty on the expiry of his leave* he shall refund the amount drawn together with interest at the rate *allowed by the fund.*

9-A. Where the accounts of a recognised provident fund *are kept outside British* India, certified copies of the accounts shall be supplied not later than the 15th June in each year to a local representative of the employer in British India:

Provided that the Income-tax Officer may in any year appoint a date later than the 15th June as the date by which the certified copies shall be supplied

10. (*1*) An application for recognition shall be made by the employer maintaining the fund for which recogni-

tion is sought and shall be accompanied by the following documents :—

(*a*) the trust deed if any in original with one copy thereof, the latter to be retained by the Commissioner, and

(*b*) the rules of the fund:

Provided that if the original of the trust deed cannot conveniently be produced, it shall be open to the Commissioner of Income-tax to accept in lieu of the original a copy certified either by a Magistrate or in any manner specified in rule 7 of the Indian Companies Rules, 1914, in which case an additional copy shall be furnished for retention by the Commissioner.

(*2*) The application shall be submitted through the Income-tax Officer of the area in which the accounts of the funds are kept, or, if the accounts are kept outside India, through the Income-tax Officer of the area in which the local headquarters of the employer are situate.

(*3*) The application shall contain the following information :—

(*a*) Name of employer and address, his business, profession, etc., also his principal place of business.

(*b*) Number of employees subscribing to the fund—

(*i*) in British India;

(*ii*) in Indian States;

(*iii*) outside India.

(*c*) Place where the accounts of the fund are or will be maintained.

(*d*) If the fund is already in existence—

(*i*) a copy of the last balance sheet of the fund, where such is maintained,

(*ii*) details of investments of the fund.

(*4*) A verification in the following form shall be annexed to the application.

Form of Verification.

We/I, the trustee(s) of the abovenamed fund, do declare that what is stated in the above application is true to the

best of our information and belief, and that the documents sent herewith are the originals or true copies thereof.

11. Where an employee of a company owns shares in the company with a voting power exceeding ten per cent. of the whole of such power the sum of the exempted contributions of the employee and employer to the recognised provident fund maintained by the company shall not exceed Rs. 250 in any month.

12. If an employee assigns or creates a charge upon his beneficial interest in a recognised provident fund, the Income-tax Officer shall, on the fact of the assignment or charge coming to his knowledge, give notice to the employee that if he does not secure the cancellation of the assignment or charge within two months of the date of receipt of the notice the consideration received for such assignment or charge shall be deemed to be income received by him in the year in which the fact became known to the Income-tax Officer and shall be assessed accordingly.

13. If the Commissioner withdraws recognition from a recognised provident fund, the balance to the credit of each employee at the end of the financial year prior to the date of the withdrawal of recognition shall be paid to him free of income-tax and super-tax at the time when such employee receives the accumulated balance due to him. The remainder of the accumulated balance due to him shall be liable to income-tax and super-tax as if the fund had never been recognised.

14. Before withdrawing recognition, the Commissioner of Income-tax shall give an opportunity to the employer and the trustees of the fund to show cause why recognition should not be withdrawn

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FINANCE DEPARTMENT (CENTRAL REVENUES).

Notification No. 10, dated the 15th March, 1930

In pursuance of sub-section (*2*) of section 58-F of the Indian Income-tax Act, 1922 (XI of 1922), the Governor General in Council is pleased to fix six per cent as the rate referred to in the said sub-section.

CENTRAL BOARD OF REVENUE.

Notification No. 12, dated the 15th March, 1930.

In exercise of the powers conferred by Chapter IX-A and by section 59 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue is pleased to make the following rules, the same having been previously published as required by sub-section (*1*) of section 58-L read with sub-section (*4*) of section 59 of the said Act:—

1. These rules may be called the Indian Income-tax (Provident Funds Relief) (Central Board of Revenue) Rules.

2. In these rules "section" means a section of the Indian Income-tax Act, 1922 (XI of 1922).

3. An order according recognition to a provident fund shall take effect—

(*a*) in cases where the application for recognition has been received by the Commissioner of Income-tax before the 31st May 1930—on 31st March 1930;

(*b*) in other cases—on the last day of the month in which the order is made, or, at the request of the employer, on the last day of any later month in the same financial year.

4. An appeal under sub-section (*5*) of section 58-B shall be in the following form and shall be verified in the manner indicated therein:—

Form of appeal against non-recognition of a Provident Fund by a Commissioner of Income-tax.

To

The Central Board of Revenue.

The petition of   employer(s) carrying on business, profession or   at

Your petitioner(s) applied to the Commissioner of Income-tax under section 58-B of the Indian Income-tax Act, 1922, for the recognition of the provident fund maintained by them (him) for the benefit of their (his) employees. The Commissioner of Income-tax has refused recognition for the reasons stated in his order dated   of which a copy is attached.

For the reasons set out below your petitioner(s) submit(s) that the fund should be recognised, and pray(s) that the Central Board of Revenue may be pleased to accord recognition.

Grounds of appeal.

We/I   the petitioner(s) named in the above petition do declare that what is stated therein is true to the best of our/my information and belief.

Signature

Address of Appellant.

Date

5. The accounts of a recognised provident fund shall be prepared at intervals of not more than twelve months.

6. An account shall be maintained for each subscriber to the fund in the following form :—

Name....................

Date of joining

Account closed.
date
Paid to employee
Lapsed to employer or to fund
Recovery by employer.

Year and month.	Salary.	Contributions and Interest.						Total contributions. Columns 3, 5 and 7.	Total Interest. Columns 4, 6 and 8.	Exempt.		Not exempt.		Additions to total income. (5, 7 and 10.)	Remarks.
		Contributions by employee.	Interest on sums in column 3.	Regular contributions by employer.	Interest on sums in column 5.	[illegible] ex-employees' contributions lapsing to the benefit of other employees).	Interest on sums in column 7.			Contributions not exceeding 1-6th of salary for the year.	Interest on sums in column 11 at.....% p.a.	Contributions. Column 9 minus Column 11.	Interest. Column 10 minus Column 12.		
1	2	3	4	5	6	7		9	10	11	12	13	14	15	16
BALANCE B. F. April . . . . May . . . . March															
Adjustment on account of temporary withdrawals account (Column 11 and 12 only.)	Total .														
Adjustment on account of non-repayable withdrawals account (Columns 11, 12, 13 and 14).	Total carried over .	3 and 4.		5 and 6.		7 and 8.				11 and 12.					

N.B.—The totals of Columns 3 and 4, 5 and 6, 7 and 8 and 11 and 12 will be carried into the next year as the opening balance of Columns 3, 5, 7 and 11, respectively.

NON-REPAYABLE WITHDRAWALS ACCOUNT.

	Amount.	
April		
May		
June		
July		
....		
....		
....		
March		
Total .		

TEMPORARY WITHDRAWALS ACCOUNT.

	Advance.	Repayment.	Interest.
Balance brought forward—			
April			
May			
June			
July			
....			
....			
....			
March			
		Balance carried over	

7. An abstract for the financial year or other applicable accounting period of the individual account of each employee participating in a recognised provident fund shall be furnished by the trustees to the Income-tax Officer of the area in which the employer conducts his business, profession or vocation, or to such other Income-tax Officer as the Commissioner may, in each case, direct, not later than the fifteenth day of June in each year It shall be in the form prescribed in rule 6, but shall show only the totals of the various columns thereof for the financial year or other accounting period It shall also give an account of any temporary withdrawals by the employee during the year and of the repayment thereof

8. The account to be made under the provisions of sub-section (*1*) of section 58-J shall show in respect of each employee (*i*) the total salary paid to the employee during the period of his participation in the provident fund, (*ii*) the total contributions, (*iii*) the total interest which has accrued thereon, and (*iv*) so far as may be, the percentage of the employee's salary in accordance with which contributions have been made by the employer and employee

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CENTRAL BOARD OF REVENUE

Notification No. 35, dated the 12th July 1930

In exercise of the powers conferred by sub-section (7) of section 33-A of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue makes the following rules :—

Rules

(*1*) The Commissioner of Income-tax on receipt of an appeal under section 33-A of the Indian Income-tax Act, 1922, shall, unless, in pursuance of the proviso to sub-section (*3*) of that section, *the appeal is* withdrawn, appoint a [illegible] consisting of not less than three and not [illegible] him, subject to the provi- [illegible] ction, from a panel constituted and *maintained by the* Central Board of Revenue

(*2*) Appointments to, and resignations or removals from, the panel shall be published *in the Gazette of India*

(3) The names of the members chosen by the Commissioner shall be communicated to the appellant within one week of receipt of the appeal in the Commissioner's office or of the decision of the Commissioner under section 33, as the case may be.

(4) Within a period of 15 days from the receipt of the communication, the appellant may object, without giving any reasons, to the inclusion of any name or names in the Board, and submit the names of not less than five members of the panel to whom he will not object.

(5) In the event of an objection to any name, the Commissioner shall substitute a fresh name therefor, but shall not be bound to accept a name submitted by the appellant, and shall communicate it forthwith to the appellant.

(6) The appellant may not subsequently object to the inclusion in the Board of any name submitted by himself.

(7) The appellant shall be allowed one further period of fifteen days in which to object to names not originally included by the Commissioner nor submitted by himself.

(8) If the appellant has twice objected to the constitution of the Board proposed by the Commissioner, the Central Board of Revenue shall settle the composition of the Board and the decision of the Central Board of Revenue shall be final.

(9) The time and place of the first meeting of the Board shall be fixed by the Commissioner after consulting the members. The time and place of subsequent meetings shall be fixed by the Board and announced to the appellant and the Commissioner.

(10) The members of the Board shall elect their own Chairman.

(11) The decision of the Board shall be the decision of the majority of members present. All the members present shall sign the report, and any member who differs from the others may record a dissenting minute. Should there be an equality of votes, the Chairman shall have a casting vote. No decision of the Board which is signed by less than half the members shall be valid. The proceedings of the Board shall not be invalidated merely by reason of the absence of a member or his failure to sign the report of the Board.

CENTRAL BOARD OF REVENUE

Notification No. 24, Income-tax, dated the 7th May 932—In exercise of the powers conferred by section 59 f the Indian Income-tax Act, 1922 (XI of 1922), read with aragraph 1 of Part I-A of Schedule II to the Indian inance (Supplementary and Extending) Act, 1931, the entral Board of Revenue hereby makes the following rule, e same having been previously published as required by ib-section (4) of the said section, namely —

Rule

The notice of demand referred to in paragraph 1 of 'art I-A of Schedule II to the Indian Finance (Supple- ientary and Extending) Act, 1931, shall be served in the ollowing form:—

'otice of Demand under paragraph 1 of Part I-A of the Schedule to the Indian Finance (Supplementary and Extending) Act, 1931

'o

1. You have been summarily assessed for the year to income-tax amounting to Rs hown in the copy of the assessment form sent herewith

2. If you are dissatisfied with this assessment, you may ipply to me within 30 days of the receipt of this notice for he cancellation or revision of the assessment. My orders n such application will be final, and will specify the time vithin which payment should then be made

3 You may, however, also submit with such applica- ion a return of your income under section 22 (2) of the ndian Income-tax Act in the form attached for the pur- pose. If you do so, the demand now made will be can- celled and the assessment will be made under section 23 of the Act, and, subject to section 30 of the Act, an appeal will lie to the Assistant Commissioner

4 If you do not present such an application (with or without a return) within the time specified in paragraph 2, you must pay the amount of Rs on or before the to the officer in charge of the

Government Treasury or Sub-Treasury/the Agent, Imperial Bank of India, at
For failure to do so, you will be liable to a penalty not exceeding the amount of tax.

5. Chalans to be presented with the amount at the time of payment are attached. Should you lose them, you should apply to the Income-tax Officer for fresh ones.

6. On payment you will be granted a receipt.

Income-tax Officer.

Circle.

Dated 193 .

PART III.

NOTES AND INSTRUCTIONS REGARDING THE INCOME-TAX LAW AND RULES.

NOTES AND INSTRUCTIONS REGARDING THE INCOME TAX LAW AND RULES.

1. *Extent of the Act.* [*Section 1 (2)*]—This sub-section governs the whole of the Act and defines the areas to which the Act applies Section 7 (2) on the other hand governs merely the taxation of particular classes of income

The words " and to all other servants of His Majesty in those dominions " were added in the Act of 1918 as it was considered advisable to abandon the previous limitation, in the case of persons serving outside British India, of liability to British subjects, since it not infrequently happens that subjects of Indian States are taken into Government employment and sent to serve in places outside British India

The words " including British Baluchistan " were inserted in the Act of 1922. Prior to the passing of that Act, the Income-tax Act was applied to British Baluchistan by notification in a restricted form, income-tax being, under the notification, leviable only upon salaries received by persons in the service of, and paid by or on behalf of, Government or of a local authority established in the exercise of the powers of the Governor-General in Council The Act now applies in full force to the whole of British Baluchistan

The whole of the Act, with the exception of section 7 (2) and 64, has been applied to the Civil and Military Station, Bangalore, and the District of Abu, wh
7 (2) has been applied. On
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Central India and the Brit
way lands) in the Bombay
and collection of income-ta
of local authorities established in the exercise of the powers of the Governor General in Council

The Civil and Military Station of Bangalore, Berar and the District of Abu are distinct from British India and, strictly speaking, all profits accruing or arising or received in British India or deemed to accrue or arise or to be received in British India are liable to tax even if they have already been taxed in those areas. *Similarly, all profits accruing or arising or received in any of those areas or deemed to accrue or arise or to be received in those areas are liable to tax even if they have already been taxed in*

the Civil and Military Station if the headquarters of the firm or company, etc , are in British India, and a similar refund or deduction is given at Bangalore if the headquarters of the firm or company are at Bangalore. The whole of the Act has also been applied to

Angul, but under a notification issued under section 60 of the Act, the income of persons in that District other than persons in the service of Government has been exempted from liability to the tax—see paragraph 17 (35).

Under the sub-section—

(*a*) the Act applies in Indian States to all persons in the service of Government, whatever their nationality. It applies in Indian States to persons in the service of a local authority established in the exercise of the powers of the Governor General in Council, only if they are British subjects or servants of Government lent to the local authority.

(*b*) the salaries of Government officers serving outside India are not liable to income-tax unless they are drawn or otherwise received in India.

(*c*) Frontier Agency tracts and ceded areas are included in the term "dominions of Princes and Chiefs in India in alliance with His Majesty".

2. *Definition of "agricultural income".* [*Section 2 (1).*]—Agricultural income is exempted from tax under the provisions of section 4 (3) (*viii*) of the Act and any income to be exempted must fall within the words of this definition. The definition was amended in the Act of 1922 in order to make it clear that rent or revenue derived from land used for agricultural purposes [clause (*a*)] is exempt from tax only in cases where the land is assessed to land revenue by an authority in British India or is subject to a local rate assessed and collected by an authority in British India, and that the exemption does not apply to cases where the land pays revenues or local rate to authorities outside British India. Clauses (*b*) and (*c*) were also amended at the same time in order to make it clear that the limitations in clause (*a*) apply also to the incomes specified in clauses (*b*) and (*c*), so that income derived from agriculture will only be exempt if the agriculture is in respect of land on which land revenue or local rate is paid to an authority in British India.

A further amendment was also made by the Act of 1922 in clause (*b*) (*iii*). Under the previous Acts profits from the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him were included under "agricultural income" only in cases where the cultivator or receiver of rent-in-kind did not keep a shop or stall for the sale of such produce. Under the present Act profits derived by a cultivator from the sale of the produce raised by him are included in the term "agricultural income" where the produce is sold in its raw state, that is, if no process has been performed in respect of the produce other than a process of the nature described in sub-clause (*ii*). The tax therefore is now not leviable on the profits derived by a cultivator or receiver of rent-in-kind from the sale of the *raw* produce raised or received by him even if he keeps a shop for the retail vend of such raw produce

If a land-owner grows on his own land which is assessed to land revenue forests or trees and derives income therefrom, he is not liable to income-tax on such income. Persons, however, who take contracts in forests for the cutting down and selling of timber are liable to tax on the profits from such transactions

Assignment of land revenue to a Jagirdar is not assessable to income-tax in the hands of the Jagirdar.

Interest on arrears of rent of land used for agricultural purposes is part of the rent derived from the land and is therefore not liable to income-tax, subject to the exception that if the arrears are secured by a bond and are therefore recoverable by civil suit such interest is taxable.

Rule 23 prescribes the manner in which profits and gains shall be arrived at in the case of incomes derived in part from agriculture and in part from business, and provides for the separation of industrial from agricultural profits in cases where the agricultural *raw* produce is worked up for the market. Assessing authorities should determine what portion of profits derived in part from industry and in part from agriculture should be regarded as derived from industry and agriculture respectively taking into account the circumstances of each case

In the case of tea, where the person growing, manufacturing and selling tea has separate purely agricultural income (*e g*, from rent or cultivation of land on which tea is not grown) no account shall be taken of such income in calculating the profits liable to tax. Some concerns again are engaged in the growing of tea seed Where the tea seed is produced for the use of the assessee, it must, of course, be included in the profits. No tax should, however, be levied on the profits derived from the growing of tea seed in cases where the tea seed is sold to a third party and where separate accounts are maintained for the expenditure and receipts for the growing of the seed Although under section 10 (2) (*ix*) of the Act the only expenditure that can be allowed to be set against profits is expenditure incurred solely for the purpose of earning the profits or gains taxable in any year, it will only be fair in the case of tea concerns to allow as a charge against profits the whole of the cost of the upkeep (*e g.*, weeding and draining) of extensions of the estate which are not in bearing No allowance can be made on account of any capital expenditure in connection with such extensions, such as the acquisition, clearing and draining of the land, the making of roads or the erection of buildings before the cultivation begins, but when once the cultivation has begun with the completion of the planting, the annual cost of the upkeep of such extensions should be allowed as a business extension even although the expense is not in bearing

The following principle should be adopted in calculating the net dividends and regulating refunds on dividends, paid from profits that are only partly taxed in the hands of the company, *e.g.*, companies a part of whose income arises or accrues outside British

India and is not received in British India or part of whose income is derived from tax-free securities:—

> If x per cent. of the profits pay tax in the hands of the company, the total income of the shareholder for the purpose of refunds is x per cent. of the net dividend multiplied by 32/29 taking the maximum rate of income-tax as 2 annas and $8\frac{1}{2}$ pies. That part of the profits of the company which is not taxed in its hands will, of course, be taxable in the hands of the share-holder under Section 14 (2) (*a*) if the income is liable to tax under Section 4 (1) and is not exempt under Section 4 (3) or under one of the notifications issued under Section 60. But *no* addition on account of income-tax should be made to the part of the dividends not taxed in the hands of the company in computing the shareholder's total income.

Illegal *abwabs* are taxable since they do not come within the definition of "agricultural income". So also are the following items, *viz.*:—(*a*) fees received from land used for storing purchase of crops (*Paiali*), (*b*) *punyaha nazar* or *nazar* paid by tenants of agricultural holdings at the beginning of the *zemindari* year, (*c*) *nazar* for petitions presented to the *zemindars* dealing with questions of successions, settlement and partition (Raja Probhat Chandra Barua *versus* King Emperor, High Court of Bengal Reference No. 1 of 1926 (II, Srinivasan Tax Cases, page 392) and Privy Council Appeal in the same case). On the other hand, the ruling in the Bengal High Court Case No. 40 of 1920, Birendra Kishor Manikya *versus* Secretary of State for India (I, Srinivasan Tax Cases, page 67), in which it was held that though the premium paid for the settlement of waste lands or abandoned holdings might reasonably be regarded as "rent or revenue" derived from land, as used in this definition, the same considerations did not apply to the *salami* or premium paid to a land-holder for recognition of a transfer of a holding from one tenant to another, has been overruled, in respect of the *salami* in question, by a Full Bench of the High Court of Bengal in Reference No. 1 of 1925, Nawabzadi Mehar Bano Khanum *versus* Commissioner of Income-tax, Bengal (II, Srinivasan Tax Cases, page 99); this Full Bench decision was followed by the Patna High Court in Case No. 47 of 1926, Maharajadhiraj of Darbanga *versus* Commissioner of Income-tax, B. & O., (III, Srinivasan Tax Cases, page 158) and again maintained (by way of *obiter dictum*) in the High Court's subsidiary decision in the Reference case, already quoted, of Raja Probhat Chandra Barua.

The main judgment in the Reference (which was upheld by the Privy Council) dealt, not with the question of what is exempt *under the Act* as agricultural income but with the question whether non-agricultural income from permanently settled land is exempt *under the Settlement*, and answered that question in the negative.

Again in the Patna High Court Case No. 74 of 1919, in the matter of Bhikanpur Sugar Concern (I, Srinivasan Tax Cases, page 29) and in the Bengal High Court Case No. 83 of 1920,

Killing Valley Tea Company, Limited *versus* Secretary of State for India (I, Srinivasan Tax Cases, page 54), it has been held that the profits of sugar factories and profits derived from the manufacture of tea as a marketable commodity from the green leaves are liable to assessment

3. *Definition of "assessee."* [*Section 2 (2)*]—"Assessee" is defined to mean a person by whom income-tax is payable Income-tax includes super-tax which is defined in section 55 to be "an additional duty of income-tax." Under section 3 *(39)* of the General Clauses Act, the word "person" includes any company or association or body of individuals whether incorporated or not.

The charging sections (sections 3 and 55) lay down who the persons and associations are who are liable to income-tax and super-tax. Income-tax is payable under section 3 by every individual, Hindu undivided family, company, firm and other association of individuals, and super-tax under section 55 is payable by every individual, Hindu undivided family, company, unregistered firm or other association of individuals not being a registered firm. While both income-tax and super-tax, therefore, are payable by every individual, Hindu undivided family, company and other association of individuals not being a firm, there is a distinction in the case of firms All firms whether registered or unregistered (see paragraph 10) are liable to pay income-tax but while unregistered firms are liable to pay super-tax, registered firms are not. The income of registered firms is liable to super-tax in the hands of the individual partners of the registered firm. Co-operative Societies, Clubs (not being companies) and Chambers of Commerce are examples of "association of individuals."

Private provident funds of companies and firms should not be assessed to income-tax as "other associations of individuals," otherwise than by deduction at the source upon their income from investments and should not be charged to super-tax at all They are also eligible for refund of tax under Section 48 if they comply with the provisions of that section

4. *Definition of "company".* [*Section 2 (6)*.]—This definition includes all companies constituted in the Dominions of the Crown, while the latter part of the definition is confined to such foreign associations as the Central Board of Revenue may desire to treat as companies for the purposes of the Act The object of this latter part is to include associations such as the *French Sociétés Anonymes* which, though incorporate bodies, have many characteristics in common with the companies recognised by our law, if the Central Board of Revenue thinks that they should be treated as companies for the purposes of the Act.

5. *Trading operations of Indian States and Dominion Governments.*—Any trade or business in British India carried on by the Governments of Indian States or of any part of the British Empire, other than the Government of India or a Local Government, and the property occupied and goods owned in British India for the

purpose of such business are, under the provisions of the Government Trading Taxation Act (III of 1926), liable to taxation under the Indian Income-tax Act in the same manner and to the same extent as in a like case a company would be. Before attempting to assess the income of such Government, the Income-tax Officer should serve a notice under section 2 *(12)* *(b)* of the Indian Income-tax Act upon some representative of the said Government in British India declaring his intention of treating such representative as the principal officer of such Government.

6. *Definition of " previous year."* [*Section 2 (11).*]—Under section 3 of the Act, assessable income is to be computed with reference to a fixed period which is known as the " previous year ". This fixed accounting period, the income, profits and gains of which alone are taken into consideration in making an assessment, is treated as isolated, without any consideration of what went before or what came after. The definition of the phrase " previous year " in the Act of 1918 restricted the accounting period to a period of 12 calendar months. The period of 12 calendar months was the period ending on the 31st day of March next preceding the year for which the assessment was to be made, but the assessee was given an option of adopting a year of 12 calendar months ending on a date other than the 31st of March if that was the date up to which his accounts were made up. This gave rise to difficulties in the case of certain communities, whose commercial year is not necessarily a calendar year, but is a period which, expressed in calendar months, varies from year to year, and in one year may be slightly over and in another slightly under 12 months. Again, under the definition in the Act of 1918, any year which was adopted in place of the financial year had to terminate at some period within the previous financial year, and as there are numerous cases where the commercial year terminates in the month of April, the returns and accounts on which the assessment was based in such cases related to a period more than 12 months prior to the date of assessment. While the definition of the phrase in the Act of 1918 has been repeated practically without alteration in clause *(a)* of this sub-section, clause *(b)* is a new provision providing for the difficulties referred to above. Under this clause the Central Board of Revenue or the Commissioner of Income-tax in a province, if authorised by the Central Board of Revenue, may determine as the " previous year " a commercial year which may be slightly over or slightly under 12 months, and which may terminate on a date subsequent to the end of the previous financial year. The Central Board of Revenue has authorised the Commissioner of Income-tax in each province to determine as the previous year " in the case of any person, business or company, or class of persons, business or company.

(*a*) a commercial year which may consist of more or less than 12 months, provided that no commercial year which may extend to less than 11 or more than 13 calendar months in any one year shall be so determined; and

(*b*) a commercial year terminating after the end of the previous financial year, provided that no commercial year terminating later than one month after the end of the previous financial year, shall be so determined

Where the Commissioner desires that a " previous year " should be recognised which does not come within his powers of sanction as stated above, he must obtain the orders of the Central Board of Revenue.

Income-tax Officers are, therefore, debarred from treating as a " previous year " any period which does not come within the definition in clause (*a*) unless such " previous year " has been sanctioned either by the Income-tax Commissioner or the Central Board of Revenue.

Under the proviso to clause (*a*) an assessee who has, after the 31st March 1922, once exercised the option of selecting as his " previous year " a year terminating on a date other than the 31st day of March within the previous financial year, may not again exercise that option except with the consent of the Income-tax Officer, and upon such conditions as he may think fit Income-tax Officers in dealing with such cases, and Commissioners in dealing with cases under sub-clause (*b*), should take steps to secure that the changing over from one previous year to another shall not result in any loss of revenue, for example, where the period intervening between one accounting period and another exceeds one year, by getting a loss in one part of the period set off against income in another part The convenience of an assessee in this matter must be studied so far as possible, as it is desirable that the accounting period for income-tax purposes should be the same as the accounting period according to which an assessee makes up his accounts for the purposes of his business, but in the actual year of change conditions should be laid down sufficient to secure that the substitution of one year for another shall not result in any profits of an assessee escaping assessment

If an assessee closes his accounts on different dates for different businesses or different sections of the same business, or different sources of income, his income should be calculated separately for each business, section of business or source, according to the accounting year adopted for it and the aggregate of the incomes thus computed should be treated as the income of the previous year. Each of the years of which the income is thus added together must, of course, satisfy the definition of ' previous year ' in section 2 (*11*) of the Act with reference to the same year of assessment

Where an assessee is allowed to change his accounting period, the following instructions should be followed in assessing the income of the period intervening between the end of the last period of a year taken for assessment purposes in accordance with the assessee's previous accounting period, and the beginning of the first period of a year according to his new accounting period :—

If the intervening period between the last full year under the old system and the first full year under the new system is *less* than

a year, the Income-tax Officer should stipulate, before agreeing to the change of the accounting period, that the assessee should submit to an assessment being made on the income of the intervening period and the income of the first year according to the new accounting period taken together, and that the rate of tax to be applied to the aggregate income of the first new year and the broken period taken together should be the rate applicable to a total income arrived at by applying the formula $\frac{12}{12+X}$ to the aggregate income mentioned, X being the number of months in the broken period. If the intervening period is *more* than one year, the assessment will be made on similar principles, but without adding the first year under the new system to the intervening period: the formula will then be $\frac{12}{X}$.

For example: a business has been assessed, for 1930-31, on a previous year running from 1st July 1928 to 30th June 1929; it asks for permission to change its accounting year to the calendar year; the Income-tax Officer will allow this on the condition that for 1931-32, the business shall be assessed on the total income of the period 1st July 1929 to 31st December 1930, at the rate applicable (under the Finance Act in force in 1931-32) to an income of $\frac{12}{18}$, the total income of the period 1st July 1929 to 31st December 1930.

Assessment to super-tax on the income of the intervening period should be made as follows. In the first place, the formula already mentioned ($\frac{12}{12+X}$ or $\frac{12}{X}$, as the case may be) should be applied to the income. On the resulting income super-tax should be calculated in the ordinary way allowing the usual rebate of Rs. 30,000 or Rs. 75,000, as the case may be. To the tax thus obtained, the formula $\frac{12+X}{12}$ or $\frac{X}{12}$, as the case may be, should then be applied and the result will be the tax leviable.

If an assessee for some special reason closes his accounts on a particular occasion on a date different from—usually later than—that which he usually adopts, ordinary proportionate profits of 12 months out of the (say) 14 or 15 months for which the accounts are closed should be taken for the current assessment, and the balance of profits for the remaining 2 or 3 months should be left over to be included in the next year's assessment. In special cases, when the Income-tax Officer has reason to believe that the temporary extension of the accounting period has been resorted to by the assessee with some ulterior motive, he may use the discretion given to him by the proviso to section 13 of the Act.

Where an Income-tax Officer grants permission to an assessee to change his accounting period, he should record the fact clearly in his assessment order, stating in detail the nature of the change permitted, and the conditions on which permission is granted.

7. *Definition of "Principal Officer".* [*Section 2 (12).*]—Income-tax Officers should treat as the "Principal Officer" of a local authority or company or other public body or association in the first instance the officials specified in clause (*a*); it is only in cases where the Income-tax Officer has no information regarding the persons who discharge the functions of the officers mentioned in clause (*a*) or where such persons cannot be found, that he should use the powers conferred by clause (*b*) of treating as the principal officer any other person connected with the company, public body or association.

8. *Meaning of the term "local authority"*—"Local authority", a phrase used in sections 2 (*12*), 4 (*3*) (*iii*), 7 and 21, is defined in section 3 (*28*) of the General Clauses Act as

"a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of, a municipal or local fund"

9. *Definition of "public servant".* [*Section 2 (13)*]—This definition is of importance for the purposes of section 54 of the Act. The definition of the phrase in the Indian Penal Code contains the following:—

"The words 'public servant' denote a person falling under any of the descriptions hereinafter following, namely —

Ninth —Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on any matter affecting the pecuniary interests of Government or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty,

Tenth —Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district

Explanation 1 —Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not

Explanation 2.—Wherever the words 'public servant' occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation."

10. *Registered and Unregistered Firms.* [*Sections 2 (14) and (16), 14 (2) (b)* and *26-A.*]—Rules 2 to 6 prescribe the method of registering a firm. A firm to be registered must be constituted under an instrument of partnership which definitely specifies the individual shares of the partners in the profits of the firm The deed of partnership to be registered both for purposes of assessment to income-tax and super-tax is that in force in the year in which the assessment is made An application for registration may be made at any time before the assessment of the income of the firm is made but it is desirable that the application should accompany the return

under section 22 (2) of the Act. If an application is made after the assessment of the firm, it should be returned to the person presenting it as out of time. Even if such an application is accepted it can have no effect on the assessment for that year, *vide* decision in the Allahabad High Court Case No. 223 of 1923, in the matter of Lallamal Hardeo Dass Cotton Spinning Mill Company of Hathras (I, Srinivasan Tax Cases, page 266). The words " no part of the income of the firm has been assessed " in rule 2 (*b*) refer to cases in which the whole of the income of the person in question had escaped the attention of the Income-tax Department altogether until proceedings were started under section 34. They do not apply to a case in which proceedings have been taken under section 23 in respect of the income of any person and owing to that person's concealing part of his income he has been declared not liable to tax. Here and wherever else in the Act or Rules there is nothing repugnant in the context the words " assess " and " assessment " evidently refer to the process of determining the amount of profit or loss made by a person in the previous year and not to the process of levying tax or declaring that no tax is payable which as section 23 shows is a process distinct from and subsequent to assessment although the word " assessee " is defined in sub-section 2 of section 2 as a person by whom tax is payable. The distinction between a registered and unregistered firm for the purposes of this Act is:—

(1) *Income-tax* is assessed upon the profits of a *registered* firm at the maximum rate whatever the amount of the profits of the registered firm may be (see Finance Act); and a member of such a registered firm, on satisfying the Income-tax Officer that such maximum rate is higher than the rate applicable to his " total income," may get a refund on his share of those profits calculated at the difference between the two rates [see section 48 (2)], such share of the profits being included in the " total income " of such member for the purpose of determining the rate applicable [see section 16 (*1*)]. In the case of an *unregistered firm income-tax is* levied on the income of the firm at a rate graded according to the profits of the firm as if it were an individual (see Finance Act): a member of such a firm is not entitled to any refund, but his share of the profits of the firm is included in his " total income " for the purpose of determining the rate at which he shall pay income-tax on any other income [see section 16 (*1*)].

The profits of a *registered* firm are liable to tax at the maximum rate even if they are less than Rs. 1,000, while an *unregistered* firm is not liable to income-tax if its profits in any one year are less than Rs. 1,000. But where the profits of an unregistered firm are not assessed to income-tax, they are liable to tax in the hands of the individual members of the firm, that is, they are included in the assessable income of the individual member [see Finance Act and section 14 (2) (*b*)];

(2) A *registered* firm is not liable to *super-tax*, the share of individual members in the profits of such a firm being included in

the income of each individual member for the purposes of super-tax. An *unregistered* firm is, however, liable to super-tax (like an individual) on that amount of the profits of the firm which is in excess of Rs 50,000 (see Finance Act and section 55 of the Income-tax Act) Super-tax is not payable by an individual having a share in an unregistered firm in respect of the profits of the unregistered firm, except, in cases where the profits of the unregistered firm have not been assessed to super-tax (see section 55 proviso)

It has been held that under the Indian Contract Act, 1872 (IX of 1872), a minor cannot become a partner in a firm But he may be admitted to the benefits of partnership in a firm, with the consent of all the partners for the time being A minor who purports to be a partner in a firm should be treated exactly like a minor who has been admitted to the benefits of partnership in a firm. A minor who has been admitted to the benefits of a partnership has a right to such share in the property and the profits of the firm as may be agreed upon—not between him and the partners, for he cannot be a party to a contract but between the partners, and his share in the property of the firm is liable for the acts of the firm, but he is not personally liable Provided that there are at least two persons competent to contract among the members of the firm, the fact that there is also a minor who purports to be a member of the firm, or who has been admitted to the benefits of partnership in the firm does not justify the Income-tax Officer in refusing to register the firm In such cases the minor has an ascertainable share in the property and the profits of the firm His share cannot be "ignored", or attributed to the other partners The application to his share in the profits of the firm of the provisions of sub-section (*2*) (*b*) of section 14, and sub-section (*1*) of section 16 presents no difficulties, whether the firm is registered or not. Since a minor cannot have the status of member of a registered firm for the purposes of sub-section (*2*) of section 48, no claim can be made on his behalf to any refund under that section in respect of his share of the profits of a registered firm Similarly, no claim can be put forward on behalf of the minor to any set off under sub-section (*2*) of section 24 in respect of his share in loss sustained by a firm.

11. *Definition of "total income".* [*Section 2* (*15*).]—The phrase "total income" is used in sections 3, 15 (*3*), 16 (*1*), 17, 22 (*1*) and (*2*), 23 (*1*) and (*3*), 48, 55 and 56. The necessity for the definition and for the use of the phrase is due to the fact that, as stated in paragraph 3, tax is payable not only by individuals but also by firms, companies, Hindu undivided families and other associations of individuals; that is the Act provides for taxation at the source in certain cases and for taxation in the hands of the individual recipient in others Whether, however, tax is deducted at the source or in the hands of the individual recipient, it is the total income of the individual recipient from all sources to which the Act applies that determines his liability to income-tax (that is, whether his total income amounts to Rs 1,000), and the rate at

which he has to pay income-tax on the whole of his income. The solitary exception is in the case of Hindu undivided families, income from which [under section 14 (*1*) read with section 16 (*1*) of the Act] is not included in the total income of the individual recipient. Again, there are certain classes or portions of income such as the amounts deducted from salaries under the proviso to section 7 (*1*), contributions to a recognised provident fund exempt under section 58-F (*1*), the sums paid on account of insurance premia under section 15, securities issued income-tax free by the Government of India or by local Governments under the provisos to section 8, on which income-tax is not payable, but all such sums are included in the total income of the assessee for the purpose of determining his liability to income-tax and the appropriate rate at which the tax shall be levied. There is, however, no taxation at the source in the case of super-tax, nor are there any portions of income (other than income derived from a Hindu undivided family by a member or from an unregistered firm in the special case mentioned in the proviso to section 55) which are exempted from payment of super-tax and it is upon the total income that super-tax is chargeable in the hands of the individual.

12. *Graduation of income-tax.* (*Section 3.*)—The Income-tax Act deals merely with the basis, the methods and the machinery of assessment, and does not contain, as the previous Acts did, schedules specifying the rates at which income-tax shall be charged. These rates are determined by the Finance Act which is passed annually by the Central Legislature. The rates prescribed by the current Finance Act will be found at the end of Part I of this Manual. The same remarks apply to super-tax (see section 55 of the Act).

13. *Definition of "Income".* (*Section 3.*)—Section 3 of the Act of 1918 provided that the Act should apply to "income". Difficulties were experienced in regard to the assessment of business profits owing to a High Court ruling that the word "income" in that section meant income actually or constructively received and that the use of the word in that sense in the said section restricted and limited any interpretation to be placed upon the following sections of the Act which specified the different classes of income liable to the tax. This interpretation would, if strictly followed, have caused considerable inconvenience in assessing business profits to those assessees who keep their accounts not on the basis of sums actually received and sums actually paid out but on the principles of mercantile accountancy, by the preparation of a profit and loss account and the comparison of the value of the stock in hand at the beginning and at end of each year, since such assessees would have been required to recast the whole of their accounts on a cash basis for income-tax returns. There were other directions also in which so strict an adherence to the interpretation placed on the word "income" would have caused difficulties. For this reason the phraseology in section 3 and in other sections of the present Act has been re-worded. The plan adopted has been not to attempt a general covering definition of "income", but to prescribe that

the tax shall be chargeable not upon "income" (whether "income" be deemed to mean actual receipts and expenditure or any other general definition) but in respect of "all income, profits or gains" as set out and defined in section 4 and sections 6 to 12 of the Act. If there is any class of income that does not fall within the words that impose the charge in those sections, that class of income is not within the scope of the tax.

For the method of accounting to be adopted in computing "income, profits or gains," see paragraph 37.

14. *Accounting period to be adopted for determining assessable income.* (*Section 3.*)—Under the Act of 1918 tax at the rates fixed for any year was levied on the income of that year. A provisional assessment was first made on the income of the preceding year and this assessment was subsequently adjusted and corrected when the income of the year in which the provisional assessment was made was ascertained. This system has now been abolished in the present Act which provides for the tax at the rates sanctioned for any year being assessed finally on the income, profits and gains of the "previous year" (see paragraph 6) and for the abolition of the adjustment system except in the cases specially provided for in section 25. The exceptions to the general rule that assessments are made finally on the profits of the previous year are contained in this section Under the first two sub-sections of section 25, in order to guard against a possible loss of revenue owing to delay in making assessments on the profits of businesses that close down during the course of a financial or commercial year, it is provided that in such cases, in addition to the assessment on the income of the previous year, a further assessment may be made in the year in which a business, profession or vocation is closed down on the income of that year This is merely a discretionary and not an obligatory method of assessment to be adopted in exceptional cases where delay in making the assessment might lead to a loss of revenue.

The other class of cases provided for in sub-section (*3*) of section 25 is confined to those particular businesses, professions or vocations on which tax had been charged under the provisions of the Act of 1918. Since the abolition of the adjustment system meant that in the case of those particular business the tax would, had no special provision been made, have to be paid on the profits of one year more than under the system in force under the Act of 1918, it is specially provided that in the year in which such businesses, professions or vocations close down, the adjustment provided for in the Act of 1918 shall be made.

15. *When income earned outside British India is taxable* [*Section 4* (*1*).]—The Act applies to all income from whatever source it is derived if it accrues or arises or is received in British India, or is, under the provisions of the Act, deemed to accrue or arise or to be received in British India The tax is, therefore, payable on all income arising or accruing in British India whether

the recipient resides in British India or not [*see* Madras High Court Case No. 4 of 1921, Chief Commissioner of Income-tax, Madras, *versus* Bhanjee Ramjee & Company (I, Srinivasan Tax Cases, page 147)]. The tax is also payable in respect of income received in British India irrespective of whether it accrued or arose within or without British India. Tax is also payable in respect of income which is "deemed under the provisions of this Act to accrue or arise or to be received in British India". The particular cases where income is "deemed under the Act to accrue or arise or to be received in British India" are specified in section 4 (*2*), section 7 (*2*), section 11 (*3*), and section 42.

Section 4 (*2*) was inserted in the present Act owing to the tax having previously been evaded in the case of income accruing or arising out of British India and received in British India by bringing in the said income at intervals and claiming that as such income was not received in British India in the year in which it arose or accrued out of British India, it was, when brought into British India, not income but accumulated profits or savings or capital. The sub-section is restricted in its application to the case of *business profits or gains* and provides with respect to such profits or gains that they shall be deemed to be profits and gains of the year in which they are received or brought into British India notwithstanding that they did not accrue or arise in that year, provided that they are so received or brought in within three years of the end of the year in which they accrued or arose. The provision relates, of course, merely to income, profits or gains, and not to the importation of capital; it provides for the inclusion in the assessable income, profits or gains of the year in which it was received or brought into British India, of business profits or gains accruing or arising within the previous three years which would, apart from the provisions of this sub-section, have been taxable had they been brought into British India in the year in which they arose or accrued.

A person resident in British India carrying on and controlling a business abroad is not, therefore, liable to tax on the profits of the business abroad unless and until such profits are received or brought by him into British India, and when so brought or received he is only liable to tax on the profits of the last three years, but the profits of those three years are included in his taxable income of the year of receipt.

In the Madras High Court Case No. 4 of 1919, Board of Revenue, Madras, *versus* Ramanadhan Chetty (I, Srinivasan Tax Cases, page 37), it has been held that profits derived from business carried on outside British India by persons resident in British India are not liable to assessment under the Act if the profits are not remitted to British India. The assessee in this case who resided in British India was a proprietor of a money-lending business carried on by his agents in various places outside British India. The only part taken by the proprietor in the business was to acquaint himself with the state of business abroad and occasion-

ally to issue general instructions, and it was not disputed that none of the income accruing abroad had ever been transmitted to him in India.

In [illegible] of 1921, Bengal Nagpur Railwa [illegible] of State for India (I, Sriniva [illegible] en held that the Bengal Nagpu [illegible] pay tax on the interest guaranteed by the Secretary of State. This ruling should be followed in the case of all Railway companies where the interest is guaranteed by the Secretary of State and is paid in England only. It does not apply to cases where the interest is guaranteed by an authority other than the Secretary of State or is paid in India.

For the special case of tax on interest on sterling securities see paragraph 16

16. *Is interest on the sterling securities of the Government of India or on the sterling securities issued by English companies carrying on business in British India liable to Indian income-tax?* —Where such interest is received by the debenture or security holder in British India, it is clearly liable to Indian income-tax under section 4 (*1*); where, however, it is not received in British India, the tax will only be payable under the terms of the same section if the interest can be held to accrue or arise there "Accrue or arise" as used in this connection are general words descriptive of a right to receive, and in this view the relevant portion of section 4 (*1*) of the Act may be paraphrased by stating that the income to which the Act applies is income received in British India or income which there is a right to receive in British India. If this test is applied, interest on the sterling securities of the Government of India, if not received in British India, will not be chargeable with Indian income-tax; and similarly the interest on sterling debentures issued by companies will not be chargeable if, as is usually the case, there is a right to receive it in England. For the purpose of the test it is immaterial in what currency the security or loan and its interest is expressed, and consequently the same principle is also applicable in determining the liability to Indian income-tax of the interest on foreign (other than sterling) debentures. On the other hand, interest on promissory notes of the Government of India enfaced for payment in England is liable to Indian income-tax, since here the right to receive payment of interest is a right to receive it in India, and the concession by which Government paper can be enfaced for payment of interest *in London does not constitute any part of the actual contract* entered into by Government.

17. *Exemptions—Incomes excluded from "total income"* —In addition to the exemptions mentioned in section 4 (*3*), the following further exemptions have been made by the Governor General in Council in exercise of the powers conferred by section 60 of the Act.

" The following classes of income shall be exempt from the tax payable under the said Act and they shall not be taken into account in determining the total income of an assessee for the purposes of the said Act:—

(1) The official allowance which an agent of a Prince or State in India, who has been duly accredited to represent the Prince or State for political purposes in any place within the limits of British India, receives as such agent in British India from the Prince or State; and the official salaries and fees which a Consul-General, Consul, Vice-Consul or Consular Agent of a foreign State, whether ' de carriér ' or not, and whether a British or a foreign subject, or a representative or consular employee of a foreign State, not being a British subject, receives in India from such foreign State in his capacity of Consul-General, Consul, Vice-Consul or Consular Agent, representative or consular employee.

(The latter portion of this exemption applies only to salaries and fees received from their Governments and not to any other income, profits or gains, accruing or arising to them or received by them in British India.)

(1-A) Sums paid in pursuance of Article 3 of the agreement dated the 17th August 1825 between the British Government and the King of Oudh.

(1-B) Income derived from the *Bua* tax defined in clause (c) of section 2 of the Teri Dues Regulation, 1902.

(2) The salary and allowances paid by a State in India during the period of deputation to any person deputed by the State for training in British India.

(3) Scholarships granted to meet the cost of education.

(4) Such portion of the income of a member of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Royal Indian Marine as is compulsorily deducted from his salary by the orders, or with the approval of Government for payment to a mess, wine or band fund.

(5) The allowances attached to—

The Victoria Cross.

The Military Cross.

The Order of British India.

The Indian Order of Merit.

The King's Police Medal.

The Indian Police Medal.

(5-A) The interest on Government securities held by, or on behalf of, Ruling Chiefs and Princes of Indian as their private property.

(6) ' Jangi Inams ' awarded to Indian officers, Indian other ranks and followers in respect of services in the Great War.

(7) The yield of Post Office cash certificates.

(8) The interest on deposits in the Post Office Savings Bank.

(9) The income of a University or other educational institution existing solely for educational purposes and not for purposes of profit

(10) The salary of His Majesty's Trade Commissioners in India.

(11) The salary of the Canadian Trade Commissioner in India at Calcutta

(12) The salary of the Trade Commissioner in India of the United States of America, and of any members of his staff who are citizens of the U. S A and have been detailed for duty with the said Trade Commissioner by the Government of the said States

(13) The salaries of the correspondent of the International Labour Office, New Delhi, and his staff.

(13-A) The salaries of the Organiser and Manager of the Branch Office of the League of Nations, Bombay, and his staff.

(14) The gratuities which are granted to officers and others in respect of wounds or injuries received either in action or in the performance of duty otherwise than in action in His Majesty's Naval, Military or Air Forces, British or Indian, or in the Auxiliary Force, India, or in the Indian Territorial Force or in the Royal Indian Marine.

(15) The gratuities which are granted to the widows, children or other relatives of officers and others who are killed in action or suffer violent death due directly or wholly to war service, or are killed or die of injuries sustained on flying duty or while being carried on duty in air craft under proper authority or die within seven years from wounds or injuries so received.

(16) Retiring gratuities with increments thereto granted under the rules framed by the Secretary of State in Council in pursuance of the Royal Warrant, dated the 25th April 1922

(17) Gratuities sanctioned under Army Instruction (India), No. 223, dated the 21st March, 1922, for regular Royal Engineer Officers on the Indian establishment belonging to the Survey or Railway Department and regular Indian Army Officers of the Survey Department

(18) Gratuities granted to Assistant Surgeons of the Indian Medical Department in Military employment declared surplus to establishment under Army Instruction (India), No 516 of 1924

(19) Gratuities which are granted by the Railway Board or under general orders issued by the Railway Board to employés on their retirement or discharge from service or, in the event of their death while in service, to their widows or children or other members of their families.

(20) Extraordinary gratuities which are granted by Government or by Railway Administrations to Government or railway servants (or to their widows, children or other representatives, as the case

may be) who are injured or killed in the execution of their duties or who suffer injury or death owing to devotion to duty.

(20-A) Gratuities granted to the staff of the Indo-European Telegraph Department in pursuance of the Resolution of the Secretary of State for India in Council dated the 24th June, 1930.

(20-B) Gratuities granted under paragraph 6 of Army Instruction (India), No. 101, dated the 9th September, 1930.

(21) The allowance or salary paid in the United Kingdom to officers of Government on leave or duty in that country whether such allowance or salary is paid in sterling in the United Kingdom or by means of negotiable rupee drafts on a bank in India.

(22) The leave allowance or salary drawn from any Colonial Treasury by officers of Governments on leave or duty in the Colony.

(23) Leave salaries or leave allowances paid in the United Kingdom or in a Colony, to officers of local authorities, or to the employés of Companies, or of private employers on leave in the United Kingdom or in such Colony.

(24) Vacation salaries paid in the United Kingdom or in a Colony to Judges of High Courts or of Chief Courts, to Judicial Commissioners, or to other officers of Government, when on vacation therein.

(25) The pensions of officers of Government residing out of India drawn from any Colonial Treasury or paid in the United Kingdom, whether such pensions are paid in sterling or by means of negotiable rupee drafts on a bank in India.

(26) The salaries of the light house keepers of light houses in the Red Sea.

(27) The pensions paid in the United Kingdom or in a Colony to officers of local authorities or employés of companies or of private employers, such officers or employés being resident out of India.

(28) The interest on Mysore Durbar Securities.

(29) Pensions granted to officers of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Auxiliary Force, India, or of the Indian Territorial Force, or of the Royal Indian Marine or to members of the Indian Police Forces, in respect of wounds or injuries received in action or in the performance of their duties as members of such forces otherwise than in action.

(30) Pensions granted to members of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Auxiliary Force, India, or of the Indian Territorial Force, or of the Royal Indian Marine, who have been invalided from service with such forces on account of bodily disability attributable to, or aggravated by, such service.

(31) Value of rations issued in kind or money allowances paid in lieu thereof, to any officer or other rank in His Majesty's Naval, Military or Air Forces, British or Indian, or in the Auxiliary

Force, India, or in the Indian Territorial Force, or in the Royal Indian Marine

(32) Value of rent-free quarters occupied by, or money allowance paid in lieu thereof to, Indian officers, British Warrant and non-commissioned officers and men of His Majesty's Military or Air Forces, and British and Indian Warrant officers of His Majesty's Naval and Marine Forces, in all cases irrespective of whether the individual concerned is married or single

(33) Conservancy allowance granted in lieu of free conservancy to non-departmental Warrant and non-commissioned officers of the Indian Unattached List, departmental non-commissioned officers of the India Unattached List not in receipt of consolidated rates of pay and Warrant and non-commissioned officers of the permanent staff of the Auxiliary and Territorial Forces

(34) The value of the free education provided for the children of British Warrant and non-commissioned officers and any grants-in-aid made to British Warrant and non-commissioned officers in lieu of the provision of free education for their children

(35) The income of persons, other than persons in the service of the Government, residing in the district of Angul

(36) The perquisite represented by the right of any of the officers specified in the annexed list to occupy free of rent as a place of residence any premises provided by Government

List of officers.

The Governor General

The Commander-in-Chief

The Governor of a Governor's Province.

The North-West Frontier Province

The Chief Commissioner of any of the following Provinces, namely:—

British Baluchistan,

Delhi,

Ajmer-Merwara,

Coorg,

and the Andaman and Nicobar Islands, and

any first class Resident in the Political Department

(37) Such part of income in respect of which tax is payable under the head "Property" as is equal to the amount of rent payable but not paid by a tenant of the assessee, where—

(*a*) the tenancy is *bonâ fide;*

(*b*) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;

(*c*) the defaulting tenant is not in occupation of other property of the assessee; and

(*d*) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent.

(38) The lump grants made by Government to the Indian Church—

(1) for the provision of episcopal supervision and ministrations;

(2) for the payment of allowances to clergymen entertained in lieu of Chaplaincies reduced; and

(3) in lieu of the grants-in-aid at present given for the entertainment of clergymen of the Additional Clergy Society under Articles 602 and 603 of the Civil Service Regulations.

17-A. *Exemptions—Incomes included in " total income ".*—The following classes of income shall be exempt from the tax payable under the said Act, but shall be taken into account in determining the total income of an assessee for the purposes of the said Act:—

(1) The interest on Government securities purchased through the Post Office, and held in the custody of the Accountant-General, Posts and Telegraphs.

(2) Sums received by an assessee on account of salary, bonus, commission or other remuneration for services rendered, or in lieu of interest on money advanced, to a person for the purposes of his business,

where such sums have been paid out of, or determined with reference to, the profits of such business.

and, by reason of such mode of payment or determination, have not been allowed as a deduction but have been included in the profits of the business on which income-tax has been assessed and charged under the head " business ";

Provided that such sums shall not be exempt from the payment of super-tax unless they are paid to the assessee by a person other than a company and have already been assessed to super-tax.

(3) The profits of any Co-operative Society other than the Sanikatta Salt-owners' Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act, 1912 (II of 1912), the Bombay Co-operative Societies Act, 1925 (Bombay Act VII of 1925), or the Burma Co-operative Societies Act, 1927 (Burma Act VI of 1927), or the dividends or other payments received by the members of any such Society on account of profits.

The exemption which extends both to income-tax and super-tax applies only to " profits " in the strict sense of the word as used in the Act and does not include " income " derived by Co-operative Societies from interest on securities or dividends. The Socie-

ties whose income liable to income-tax is not taxable at the maximum rate or who have no income liable to tax should apply to the Income-tax Officer concerned for the issue of exemption certificates authorising persons paying interest on securities not to deduct any tax at source or to deduct tax at a lower rate than the maximum, as the case may be.

Where a Co-operative Society incurs a loss under any head of income that has been exempted from tax by notification under section 60 (*1*) of the Act, such loss may be set off under section 24 against any income that is not so exempted

(4) Such part of the profits or gains of a firm which has discontinued its business, profession or vocation as is proportionate to the share of an assessee in the firm at the time of such discontinuance, if income-tax has at any time been charged on such business, profession or vocation under the Indian Income-tax Act, 1918 (VII of 1918), or if an assessment has been made on the firm in respect of such profits or gains under sub-section (*1*) of section 25 of the Indian Income-tax Act, 1922 (XI of 1922).

The above exemption applies only to income-tax and not to super-tax.

Apart from the particular cases mentioned in this paragraph, the incomes or portions of incomes exempted under section 4 of the Act and under the orders of the Governor General in Council under section 60 of the Act referred to in paragraph 17 are not only not subject to income-tax or super-tax, but they are also not to be taken into account in determining the rate of tax on other income, they are excluded from consideration altogether

17-B. *Exemptions—Indian Finance (Supplementary and Extending) Act, 1931.*—The classes of persons specified in the schedule below are exempt, under section 60 of the Act,—

(*a*) from the operation of section 7 or section 8, of the Indian Finance (Supplementary and Extending) Act, 1931, in respect of income of the year 1930-31 or the year 1931-32 chargeable under the head "Salaries", and

(*b*) from the operation of section 7 or section 9, of the Indian [illegible] ng) Act, 1931, in [illegible] the year 1932-33

SCHEDULE.

Classes of persons exempted.

1. All persons in the service of the Crown in India (including persons for the time being on foreign service as defined in the Civil Service Regulations or the Fundamental Rules as the case may be) or holding any office the emoluments of which are defrayed

from the revenues of India, whose income of the year 1931-32 or the year 1932-33, as the case may be, chargeable under the head " Salaries " is reduced—

(a) under the operation of any law, rule, direction or order enacted or made for the purpose of effecting a temporary reduction of pay as an incident in the measures undertaken to meet the existing financial emergency, or

(b) as the result of a voluntary surrender made with a like intent and accepted by the appropriate authority.

2. All servants of an eligible Railway Company, as defined in the Explanation hereto attached, whose income of the year 1931-32 or the year 1932-33, as the case may be, chargeable under the head " Salaries " is reduced—

(a) under the operation of any order of the Railway Company effecting a temporary reduction of pay as an incident in the measures undertaken to meet the existing financial emergency, or

(b) as the result of a voluntary surrender made with a like intent and accepted by the Railway Company.

Explanation.—The expression " eligible Railway Company " means a Railway Company which has satisfied the Governor General in Council that it will pay to the Governor General in Council a sum equal to the amount of the new or additional income-tax and super-tax which would have been payable by its servants under the operation of the aforesaid sections of the Indian Finance (Supplementary and Extending) Act, 1931, if the exemption herein contained had not been granted by the Governor General in Council.

17-C. Where, owing to the fact that the total income of an assessee has reached or exceeded a certain limit, he is liable to pay super-tax or to pay super-tax at a higher rate, the amount payable by him on account of income-tax and super-tax shall, where necessary, be reduced so as not to exceed the aggregate of the following amounts, namely:—

(a) the amount which would have been payable on account of income-tax and super-tax if his total income had been a sum less by one rupee than that limit, and

(b) the amount by which his total income exceeds that sum.

18. *Allowances in assessing profits of railway or tramway business.*—The following modification has been made in respect of income-tax in favour of income derived from railway or tramway business (other than an electric tramway):—

An assessee deriving income from a railway or tramway business may at his option require that in computing the profits or gains of such business the following allowance shall be made in lieu of the allowances specified in clause (v), clause (vi) and clause (vii) of sub-section (2) of section 10 of the said

Act, namely, the actual expenditure incurred by the assessee during the previous year on repairs, replacements and renewals of plant, machinery, buildings and furniture which are the property of the assessee.

Provided that an assessee who in any year has exercised the option hereinbefore conferred shall not be entitled save with the consent of the Commissioner of Income-tax to withdraw that option in any subsequent year.

Provided further that nothing in this notification shall apply to an electric tramway.

19. *Exemption of income derived from property held under a religious or charitable trust.*—Under section 4 (3) (i) income derived from property which is held under a purely religious or charitable *trust or under any other legal obligation* that it should be utilised for religious or charitable purposes is exempt The word 'property' in this section does not bear the restricted meaning that it bears in section 9 of the Act but includes securities, a business, or share in a business

Section 4 (3) (i) exempts two categories of income First, income from property which is dedicated absolutely and secondly, in case of qualified dedication, so much of the income as is applied or finally set apart for application to religious or charitable purposes.

In the case of absolute dedication, *i.e*, where there is no outstanding secular interest reserved by the trust, the exemption is complete. In the case of qualified dedication, the trust reserves a secular interest to beneficiaries, Shebaits or heirs of the founder, etc. This secular interest is assessable to income-tax. Suppose 60 per cent. is under the trust applicable to religious or charitable purposes and 40 per cent distributable among the heirs of the settlor. The 40 per cent is assessable Suppose also that only 50 per cent. is actually applied or set apart for religious or charitable purposes and the heirs or the Shebaits misappropriate 10 per cent. The 10 per cent is under the section also assessable

The maintenance of a Shebait may or may not come within the category of religious or charitable purpose It depends on the circumstances of the case If, for instance, a dedication is absolute and a small portion of the income is given to the Shebait for his remuneration for carrying out the trusts of the endowment, it would not be secular. If, on the other hand, a fixed sum is given to religious or charitable purposes and the residue of the income is given to the Shebait for his maintenance, the residue would be held to be secular

The test is whether a suit for partition lies for division of the residue. If it does, then the residue is secular and assessable In such case, any portion of the dedicated, *i.e*, ordinarily exempted income which may be misappropriated would also be assessable

Section 4 (*3*) (*ii*) similarly exempts the income of religious or charitable institutions which is derived from voluntary contributions and is applicable solely to religious or charitable purposes.

To secure exemption under clause (*i*) or clause (*ii*) of section 4 (*3*) the income of religious or charitable institutions and income derived from property held for religious or charitable purposes need not be actually spent on religious or charitable purposes *in the year of receipt*. It is sufficient if it is set aside for those purposes. In the case of *mixed* trusts, the income-tax authorities are required to enquire into the application of the income. Where property is held in part only for religious or charitable purposes a proportionate share of any expenses incurred on management should be considered as applied to those purposes.

To remove doubts regarding the application of these two clauses, read with the definition of "charitable purposes," to universities and other educational institutions the special exemption under section 60 of the Act mentioned in paragraph 17 (*9*) was made.

Attention is also invited to the exemption mentioned in paragraph 17 (*3*) of scholarships granted to meet the cost of education in the hands of the recipients of the scholarships.

20. *Exemptions of Provident Funds.* [*Sections 4 (3) (iv) and 4 (3) (v)*].—Under section 4 (*3*) (*iv*), the interest on securities held by Provident Funds to which the Provident Funds Act, 1897 (now Act XIX of 1925), applies, is exempt from tax. Similarly under section 4 (*3*) (*v*), capital sums paid as accumulated balances at the credit of subscribers to *such* funds are exempt from tax and are not included in computing their "total income". The words "accumulated balance" include not only contributions but also interest thereon. Under section 15 (*1*), contributions paid by a subscriber to such funds are also exempt from income-tax to the extent mentioned in section 15 (*3*). Contributions by *employers* to such funds stand on a totally different footing and are dealt with in paragraph 49. For special privileges for "recognised" provident funds see paragraph 20-A *et seq*.......

The exemptions granted to Provident Insurance Societies which comply with the provisions of the Provident Insurance Societies Act, 1912, or which have been exempted from its provisions, were withdrawn by the Income-tax (Amendment) Act, 1924 (XI of 1924). Provident Insurance Societies to which the Provident Insurance Societies Act applies, or which have been exempted from its provisions and which were in existence before 1st April 1924 will continue to enjoy the exemptions under sections 4 (*3*) (*iv*) and (*v*) and section 15 (*1*) to which they were entitled under Act XI of 1922 before it was amended by Act XI of 1924. These concessions cannot be claimed by any other Provident Insurance Societies.

A special exemption has been granted [see paragraph 17 (*19*)] in respect of gratuities paid out of Railway Provident Funds on the retirement or death of the members.

20-A. *Exemption of "recognised" Provident Funds.*—Besides the Provident Funds mentioned in paragraph 20, Provident Funds maintained by employers [section 58-A (*b*)] which conform to the conditions laid down in section 58-C of the Act inserted by the Indian Income-tax (Provident Funds Relief) Act, 1929, enjoy certain privileges in respect of income-tax subject to certain conditions. The main conditions to which such Provident Funds must conform in order to secure these concessions are:—

(1) that the funds shall be vested in two or more trustees or in the Official Trustee under an irrevocable trust,

(2) that the employer shall not be entitled to recover any sum whatsoever from the Fund except where the employee is dismissed for misconduct or voluntarily leaves employment without adequate reasons;

(3) that in any case such recoveries shall be limited to the contributions made by the employer himself,

(4) that the subscriptions of the employees and the contributions by the employer shall be regular and not casual;

(5) that the employers' contribution should not exceed the employees' subscription as a rule, and

(6) that the employee shall be employed in India or the principal place of business of the employer shall be in British India

The income-tax concessions are —

(*a*) contributions to a recognised Provident Fund both by the employee and the employer taken together shall be exempt from income-tax but not from super-tax up to 1/6th of the employee's annual salary In addition, an employee can obtain under section 15 (*1*) rebate of income-tax on insurance premia subject to the limit laid down in section 15 (*3*) If in any Fund the contributions made by an employee exceed the $\frac{1}{6}$th limit, the excess contributions and the interest thereon together with interest in excess of the prescribed maximum (at present 6 per cent) will be liable to tax;

(*b*) income on the investments held by the Fund is also exempt from income-tax;

(*c*) the accumulated balance due to an employee which includes interest on contributions—is also exempt from income-tax and super-tax and is not to be included in computation of the total income, provided the employee has rendered continuous service with his employer for not less than five years The Commissioner has also power in certain circumstances to allow the exemption even when the service rendered is less than this period

The contributions made by an employer to the individual accounts of his employee in a recognised Fund, *less* recoveries if any under the provisions of section 58-C (*1*) (*f*), are to be allowed as an

item of expenditure under section 10 (*2*) (*ix*) of the Act, as the Fund is an irrevocable trust.

20-B. *Recognition of Provident Funds and withdrawal of recognition. (Section 58-B.)*—The Commissioner of Income-tax may accord recognition to any Provident Fund which, in his opinion, satisfies the conditions prescribed in section 58-C and the Indian Income-tax (Provident Funds Relief) Rules. An employer objecting to an order of the Commissioner refusing to recognise a Provident Fund may appeal, within 60 days of such order, to the Central Board of Revenue in the form prescribed in the Indian Income-tax (Provident Funds Relief) (Central Board of Revenue) Rules.

There is no specific provision in the Act or Rules for an appeal against *withdrawal* of recognition by the Commissioner, but such an appeal should be allowed subject to the same conditions as are applicable to an appeal against an order of the Commissioner refusing recognition. The Government of India have reserved the power to withhold or withdraw recognition from any provident funds [section 58-B (*2*)].

20-C. *Conditions to be satisfied by recognised Provident Funds. (Sections 58-C and 58-D).—Investment of funds.*—A recognised provident fund consists of contriputions by employers and employees, accumulations, interest thereon and securities purchased therewith and no other sums. So long as the "transferred balance" [section 58-J (*2*)] and the employers' contributions, interest thereon, etc., are not invested, the fund will consist solely of subscriptions, accumulations and interest thereon. If any part of the fund is deposited in the employer's own concern, and the employer gives the Trustees a promissory note therefor the note may be considered to be a "security" within the meaning of section 58-C (*1*) (*d*). So far as the transferred balance of a fund is concerned, there is no restriction as to the manner in which it should be held or invested. It may be utilized in the employer's own business, or deposited in a Bank or invested in "securities" in the widest sense of the term. The same is true of the employer's contributions subsequent to recognition and the interest thereon and on the accumulations of such interest. The employees' contributions subsequent to recognition and the interest thereon and on accumulations of such interest must be invested in the securities of the nature described in section 20 (*a*), (*b*), (*c*), (*d*) or (*e*) of the Indian Trusts Act, 1882, and payable in respect of both capital and interest in British India.

A reasonable interval should be allowed to the trustees to accumulate the contributions collected before requiring their investment as above.

A fund is not rendered ineligible for recognition by the fact that it can be closed or wound up at will by the employer or the Trustees, provided that it is not revocable otherwise than in accordance with section 58-C (*1*) (*e*).

The fact that a fund receives donations, for example from retiring partners, should not be held to render it ineligible for recognition.

Appreciation and depreciation in securities belonging to recognised provident funds.—In certain Provident Funds it is the practice to revalue the securities held at the end of each financial year and to take the appreciation and depreciation thus ascertained into consideration before allocating to the members their share of the annual profit. This practice does not render the fund ineligible for recognition. *Plus* and *minus* entries relating to such appreciation or depreciation should be made in the remarks column of the Form of account prescribed in rule 6 of the Indian Income-tax (Provident Funds Relief) (Central Board of Revenue) Rules (Part II of the Manual) Such appreciation or depreciation need not be taken into account in determining the rate of interest under section 58-F (*2*)

The appreciation of securities itself cannot directly come into the computation of the employee's total income or be liable to tax at any time. Though it is a form of accumulation of contributions, it is also not income but an increase of capital

Forfeitures to recognised provident funds. [*Section 58-C. (1) (d)*].—The only amounts that an employer is allowed by the Act to recover from a recognised Provident Fund are his own contributions to the account of a dismissed employee or an employee voluntarily leaving his employment as stated in section 58-C (*1*) (*f*) and of interest on such contributions. If the rules of any fund provide for forfeitures to the employer of any other monies—for example of a dismissed employee's own contributions and the interest thereon, this provision is repugnant to section 58-C (*1*) (*f*) and renders the fund ineligible for recognition

A provision for the forfeiture to the *fund* in certain circumstances (*e g* , assignment of employee's interest, an employee leaving service to take employment under a rival) of so much of the amount standing to the credit of an individual employee as is in no circumstances recoverable by the employer, under clause (*f*) of sub-section (*1*) of section 58-C of the Act, does not render the fund ineligible for recognition under that sub-section.

Such amounts represent accumulations of sums credited out of the employee's salary with interest thereon, and it is clear that these amounts are within the language used in clause (*d*) of sub-section (*1*) of section 58-C, read with the definition of " contribution " in clause (*d*) of section 58-A. The effect of clause (*g*) of sub-section (*1*) of section 58-C is not to require that so much of the balance at the credit of an individual employee as is not recoverable by the employer under clause (*f*) should be payable to the employee. It requires the accumulated balance due to the employee to be payable to the employee, and the definition of " accumulated balance due " in clause (*g*) of section 58-A expressly recognises the possibility that by the regulations of a fund any

part of the balance to the credit of an employee may be excluded from the amount claimable by him and therefore from the accumulated balance due for the purposes of clause *(g)* of sub-section *(1)* of section 58-C.

While therefore recoveries by the *employer* are governed by clause *(f)* of sub-section *(1)* of section 58-C, *forfeitures to the fund* are left by the Act to be governed by the regulations of the fund, so that no provision in the regulations of the funds for the forfeiture to the *fund* of any part of the balance to the credit of the individual employee will render the fund ineligible for recognition.

The inclusion in the rules of a provident fund of a provision for the payment of forfeited amounts of an individual member to his wife and family does not render the fund ineligible for recognition. The definition of the expression "accumulated balance due" to an employee which is set out in section 58-A makes it plain that the amount which is payable to the employee is not necessarily the equivalent of the total of his contributions, the employer's contributions and the interest which has accumulated thereon; and the provisions of clause *(g)* of section 58-C, read with this definition of the "accumulated balance due" are not inconsistent with the payment to a third party of forfeited amounts, although the circumstances in which the employer can himself take these amounts are limited by clause *(b)* of section 58-C.

The inclusion in the regulations of a provident fund of a provision for the forfeiture to the fund of the accumulated balance due to an employee who dies without heirs also does not make the fund ineligible for recognition. Such forfeiture to the fund does not put anything into the fund, because what is forfeited to the fund is already in the fund. As the act of forfeiture does not put any sum at all into the fund, it cannot be held to put into the fund any sum other than the contributions, etc., specified in section 58-C *(1)* *(d)*. The question of the validity of a regulation forfeiting to the fund the accumulated balance due to an employee who dies intestate and without heirs does not arise, as the existence of a such a regulation, whatever it may be worth, does not affect the composition of the fund for purposes of clause *(d)* of sub-section *(1)* of the same section.

Payment of accumulated balances of recognised provident funds to employees discontinuing participation. [*Section 58-C (1) (g) and (h)*].—If an employee who is a subscriber to a recognised provident fund, the membership of which is optional, decides to discontinue his membership of the fund while not resigning his employment, he is entitled to claim repayment of the accumulated balance at his credit, under section 58-C *(1)* *(g)* of the Act. Under section 58-A *(c)* of the Act, an "employee" means an employee participating in a provident fund. Thus a person who discontinues his participation in a fund "ceases to be an employee" within the meaning of section 58-C *(1)* *(g)* and is, therefore, entitled to claim payment of the accumulated balance due to him.

A private provident fund, participation in which is *optional*, is not qualified for recognition unless the rules confer on the participants the right to receive payment of the accumulated balance whenever participation is discontinued

20-D. *Recognised Provident Funds of businesses with principal place out of India.* [*Section 58-C (1) (a)*] —If a concern has its principal place outside British India, the Provident Fund of the employees of its British Indian business, if it is to be "recognised", should be kept separate and must conform to the conditions imposed by the Act and the Rules thereunder. The expression "all employees" occurring in section 58-C (*1*) (*a*) refers to "all employees *subscribing* to the Fund" and not to all employees of the particular employer If a concern has its principal place of business in British India, there is no objection to the foreign staff—that is the staff outside British India—subscribing to the Provident Fund They will not get any rebate of tax on the monthly contributions since their salaries having been earned outside British India will not be taxed but they will get the advantage of the exemption from income-tax of the interest on the investments of the Fund.

20-E. *Interest on accumulated balances in recognised provident funds.* (*Section 58-F*) —Interest on accumulations in recognised provident funds is exempt from income-tax but not from super-tax up to a rate to be fixed by Government which is 6 per cent. at present. In some funds, a provisional rate of interest is allowed to the employees in the first instance and the difference [illegible] the provisional [illegible] yees on a basis [illegible] the employees. In such cases, the interest credited to the individual accounts should be exempted in so far as the average interest earned by the fund as a whole does not exceed the prescribed rate of interest

Interest on sums credited to an employee's account in a recognised Provident Fund, which sums represent his share of the appreciation in the value of the securities held by the Fund, is to be regarded as interest within the meaning of sections 58-A (*f*) and 58-C (*1*) (*d*).

20-F. *Interpretation of "salary" in relation to recognised provident funds.* [*Section 58-F (1)*] —That the expression "salary" as used in Chapter IX-A of the Act does not embrace everything taxable under the head "salaries" in accordance with sub-section (*1*) of section 7, is obvious from clause (*b*) of sub-section (*1*) of section 58-C read with clause (*b*) of section 58-D *For the* purposes of Chapter IX-A, "salary" includes so much only of an employee's remuneration as is of a specific monetary amount and is payable periodically. It includes "salary" (in the more general sense in which that expression embraces "wages") which is received by any category of employees other than those excluded in clause (*c*) of section 58-A

20-G. *Accounts of recognised provident funds. (Sections 58-I and 58-J).*—The accounts of recognised provident funds are to be maintained in the form prescribed in the Indian Income-tax (Provident Funds Relief) (Central Board of Revenue) Rules. If a concern has several branches, the annual abstracts of the provident funds accounts should be sent by the employer to all Income-tax Officers who are responsible for assessing the employees.

The accounts to be made under the provisions of section 58-J must show in respect of every employee the particulars given in rule 8 of the Indian Income-tax (Provident Funds Relief) (Central Board of Revenue) Rules.

20-H. *Treatment of a fund transferred by employer to trustees. (Section 58-K).*—Any sum transferred by an employer before coming into force of the Indian Income-tax (Provident Funds Relief) Act, 1929, to the Provident Fund of his employees which has been converted into an irrevocable trust is a permissible deduction in assessing the profits of the employer. Sub-section *(1)* of section 58-K operates with reference to any assessment made after the coming into force of the Provident Funds Relief Act XII of 1929 *whenever the conditions necessary to its operation are satisfied.* The conditions necessary to its operation are that it can be predicated of the emloyer:—

(*a*) that he maintains a Provident Fund for the benefit of his employees,

(*b*) that he has not transferred the Fund or relevant portion thereof,

(*c*) that he transfers the Fund or relevant portion.

The use of the perfect tense in the definition of condition (*b*) and of the present tense in the definition of condition (*c*) shows that these conditions cannot be satisfied by any employer who, having already transferred the Fund or relevant portion before the Provident Funds Relief Act came into force, was not when the Act came into force in the position of not having transferred it, and was therefore not in a position to transfer it.

It must not be overlooked that while an employer who has effected a transfer before the coming into force of the Provident Funds Relief Act will not suffer the loss resulting from the operation of sub-section *(1)* of section 58-K, he will as a corollary not enjoy the benefit resulting from the operation of sub-section *(2)* of that section.

Employers' subscriptions to an unrecognised provident fund may be treated as business expenses if the conditions laid down in paragraph 49 are satisfied. Lump transfers of accumulated subscriptions, with or without interest thereon, made after the Provident Funds Relief Act, 1929, came into force, are governed by section 58-K which is specifically made applicable to unrecognized as well as to recognized funds.

21. *Meaning of the word "securities" as used in section 4 (3) (iv).*—The definition of the phrase "interest on securities" in section 8 of the Act should not be applied to determine the interpretation to be given to these words in section 4 (3) (iv), since the words as used in section 8 are in a specially restricted sense and do not cover, for example, interest on so typical a form of security as a mortgage. Nor should the meaning of the word "securities" in section 4 (3) (iv) be restricted to the ordinary limited legal sense in which it must always have reference to a loan Provident Funds are entitled to invest in any trustee security, and it has not been the intention of Government to discriminate between the various classes of investments which are thus legally authorised The word "securities" in section 4 (3) (iv) should therefore be interpreted as covering all securities mentioned in section 20 of the Indian Trust Act.

22. *Perquisites or benefits not capable of conversion into money.*—The provision in section 3 (2) (ix) of the Act of 1918 that "any *perquisite or benefit which is neither money nor reasonably* capable of being converted into money" was not liable to tax, has been omitted in the Act, as the existence of that provision made it impossible to assess to income-tax, for example, rent-free residences in cases where the assessee had not the power to sub-let, while rent-free residences were liable to the tax where the assessee had the power to sub-let An explanation has been added to section 7 (1) of the Act specifically providing for the taxation of perquisites in the form of rent-free residences

Under section 7 (1) of the Act, all perquisites received by an employé in lieu of or in addition to salary or wages are liable to the tax House-rent allowances and the value of rent-free quarters form additions to the remuneration of an employé, and even where residence in a particular town or building is necessary for the proper performance of the employés duties, such allowances or perquisites cover expenses of a personal character which the employé would otherwise have to incur. They do not therefore "meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit" and are therefore not covered by the exemption in section 4 (3) (vi) of the Act and are taxable under section 7 or section 12

Two conditions have to be fulfilled before the exemption specified in section 4 (3) (vi) can apply The expenses incurred by the employé must be wholly and necessarily incurred in the performance of his duties as an employé; and the allowances or perquisites must have been granted by the employer with the set purpose of meeting the extra expense thus caused to the employé, and that extra expenses only, *It is thus a question of fact in each case* whether house-rent allowance or the value of rent-free quarters is exempt from the tax, but the following examples will serve to indicate the lines on which the decision should be made —

(a) A currency officer is granted rent-free quarters in his currency office Even though his residence in that office

is necessary for the proper performance of his duties, he will be liable to the tax on the value of his rent-free quarters, since he would in any case have had to provide himself with a residence, and the perquisite does not therefore meet expenses wholly incurred in the performance of the duties of an office or employment of profit.

(*b*) A firm in Calcutta makes a practice of providing its employés with rent-free quarters, and houses some of its employés in its business premises as resident clerks. The employés of the firm, including the resident clerks, will, as in the previous case, be liable to income-tax on the value of their rent-free quarters.

(*c*) A Government office has its headquarters in Bombay, but proceeds for some months in the year elsewhere, and grants its ministerial establishment house-rent allowances or rent-free quarters in the place to which it proceeds with the specific object of providing for the maintenance of a second and, from the point of view of the grantees, *unnecessary residence in order that they* may perform their duties there. The allowance or the value of rent-free quarters will be exempt from income-tax.

In all cases where rent-free houses form part of the perquisites of an employé, the cash value of such a house to the occupier should, in no case, be deemed to be more than 10 per cent. of the salary of the employé. Where an employé is provided with rent-free furnished quarters, no attempt should be made to split the value of this perquisite into its component elements, *i.e.*, rent-free quarters and rent-free furniture. The maximum of 10 per cent. of salary should be applied to the perquisite as a whole.

Such perquisites as (for example), tiffin, domestic services or the value of passages by rail or steamer provided by employers free of charge for their employees are not taxable because they are not convertible into money and there is no special provision in the Act in regard to them as there is in regard to rent-free quarters, but passage money paid in India by an employer to his employé to enable him to go on leave is liable to tax. If, however, passage money is remitted by the employer to the United Kingdom or a Colony and paid there to an employé on leave in such country, it should be regarded as a leave allowance covered by the exemption (23) in paragraph 17.

The "Delhi moving allowance" and "Delhi Camp allowance" which is granted to the members of the office establishments of the Army Headquarters and of certain Civil attached offices of the Government of India during the period of their stay at Delhi and the Simla House-Rent Allowance granted under Rule 19 of the Simla Allowances Code and the value of rent-free quarters in lieu thereof fall under example (*c*) above and are exempt from the pay-

ment of income-tax. Special allowances granted solely to meet the higher cost of living in a station such as Compensatory local allowances and the Cutch exchange compensation allowance are liable to the payment of tax.

Rewards granted to officials for passing compulsory examinations must be distinguished from grants made to assist candidates to meet the expenses of preparing for such examinations. Such tuition grants fall under section 4 (3) (vi) of the Indian Income-tax Act (XI of 1922) and are not liable to tax even if they are only paid to successful candidates For example sums of Rs. 150 and Rs. 200 paid to military officers who have passed the Urdu qualifying and Preliminary Urdu examinations respectively are tuition grants—not rewards—and are therefore not liable to income-tax (see also paragraph 25).

In addition to classes or portions of "Salaries" drawn by officers and other ranks of the Army in India (British and Indian) mentioned in paragraphs 17 and 22, the following allowances are not liable to income-tax:—

- Messing allowance;
- Syce allowance;
- Forage allowance;
- Detention allowance;
- Meal money;
- Quarterly kit and clothing allowance;
- Outfit allowance;
- Tentage allowance whether separate or included in pay;
- Horse allowance;
- Travelling and conveyance allowances; and
- Any capital sum received in commutation of the whole or a portion of a pension or in nature of consolidated compensation for death or injuries or in payment of any Insurance Policy or as the accumulated balance at the credit of a subscriber to any such Provident Fund

The emoluments drawn by the officers and other ranks of the Army which are liable to income-tax are.—

1. Regimental Pay, Command or charge allowances, Staff Pay, P. S. C. Pay and Separation allowance.
2. Ordnance Pay.
3. Corps or Engineer Pay, Batta or field allowance.
4. Lodging allowance.
5. Value of rent-free quarters (officers).
6. Service or proficiency pay.
7. Extra duty pay.

8. Gratuities under Pay and Allowance Regulations, paragraph 137 (I).
9. Annuities under Pay and Allowance Regulations, paragraph 137 (II).
10. Bounty money.
11. Pension drawn in conjunction with pay.
12. Separation allowance.
13. Furniture allowance.
14. Pensions (except wound or disability) paid in India to British and Indian Officers and men, their widows, children and dependants.
15. Half-yearly gratuity paid to temporary nursing sisters.

The Marriage allowance is not taxable if paid to the wife of a soldier unless the total income of the wife including the allowance exceeds the minimum taxable limit. Similarly, Maternity benefit is liable only if the total income of the soldier's wife including the benefit exceeds the minimum taxable limit.

The "handling charges" granted to Station Masters are not liable to income-tax since they are intended solely to cover certain expenses that the Station Masters have to incur as such.

As regards the liability of language rewards and examination fees, see paragraph 25.

23. *Casual gains.* [*Section 4 (8) (vii).*]—In order to obtain exemption as "casual", profits must comply with two conditions:

(1) they must not be the proceeds of a profession, vocation or employment, or arise from business, that is from "any adventure or concern in the nature of trade, commerce or manufacture". [See section 2 (*4*)], and

(2) they must not be annual.

Both these conditions must be fulfilled. The exemption also is specifically not to apply to any gratuity to an employé for services rendered so as to avoid the possibility of any ambiguity in connection with the use of the word "gratuity" in section 7 (*1*). The following are illustrations of the effect of the provisions of section 4 (*3*) (*vii*)—

(1) A purchases a house with a view to re-selling it at a profit. His profits from the transaction are liable to income-tax (even although it be an isolated transaction*). B purchases a house for his own residence and later on sells it at a profit. His profit is not liable to the tax.

* *C.f.* Rutledge *versus* Commissioner of Inland Revenue Reports of the U. K. Tax Cases. Vol. XIV, page 490.

(2) A wins a prize in a lottery or a bet on the race course. His receipts therefrom are not taxable. B is a bookmaker. His profits from betting are taxable.

(3) A is a professional beggar. His receipts from mendicancy are not exempted from the tax by this sub-section.

(4) A makes *a practice of speculating in the purchase and sale* of shares. His profits therefrom are liable to the tax. B purchases Indian War Loan 1929-1947 at 95 redeemable at par. The premium received on redemption after a period of years is not liable to the tax. On the other hand the yield from Treasury Bills arising from their issue at a discount and repayment at par after 12 months or some shorter period is liable to the tax under section 12, though as this yield is not interest, the tax is not deducted at the source under section 18 (*3*).

(5) A man writes a book His receipts from its sale are taxable.

(6) Lump sum legacies are exempt; annuities granted under a will are not exempt.

24. *Income-tax Authorities.* (*Section 5*)—(1) The *Central Board of Revenue* is appointed by the Governor General in Coun- [illegible] the various sections, *e.g.*, [illegible] d 59. Rules for carrying [illegible] he Central Board of Revenue which also issues instructions regarding the interpretation of the provisions of the Act and the rules, and is entrusted with the general administration of the Act.

(2) The head of the Income-tax Department of a province is the *Commissioner of Income-tax* who is appointed by the Governor General in Council The rest of the income-tax staff in a province are subordinate to him and they are appointed and dismissed by him. His power of appointment and dismissal of Assistant Commissioners and Income-tax Officers is under section 5 (*4*) " subject to the control of the Governor General in Council ", but the Governor General in Council exercises this control through the local Government under the provisions of the following order:—

" *The Governor General in Council desires to utilise the agency of the Governor in Council of each Governor's province in the following matters only in relation to income-tax,*—

(*i*) the appointment by a Commissioner of Income-tax of any person to the substantive post of Assistant Commissioner of Income-tax or Income-tax Officer shall be subject to the previous approval of the Governor in Council.

For the promotion of an Income-tax Officer or appointment of an officer of a Provincial Civil Service to the post of Assistant Commissioner of Income-tax, the Commissioner of Income-tax

should consult the local Government and submit his nomination (of the Officer approved by the local Government) to the Public Service Commission through the Central Board of Revenue.

(ii) Any Assistant Commissioner of Income-tax or Income-tax Officer who has been dismissed or removed from office or whose increment of pay has been withheld by the Commissioner of Income-tax shall have a right of appeal to the Governor in Council.

While as regards the appointment or dismissal of such officials the Commissioner is subject to the control of the local Government, he has full power to specify the functions to be performed by each official and the areas, persons and classes of income in respect of which these functions may be exercised.

The specific powers conferred upon him in regard to income-tax assessments are specified in sections 28 (*1*), 32, 33, 37, 54 (*2*) second Proviso, 64 (*3*) and 66 of the Act. In particular he is vested with power under section 33 to review any orders passed by any income-tax official, and he alone may, under section 66 of the Act, state cases for the opinion of a High Court.

(3) The functions of *Assistant Commissioners of Income-tax* are mainly appellate, but they also exercise supervision over the work of the Income-tax Officers. The particular powers conferred on them by the Act are set out in sections 28 (*1*), 30 (*2*), 31, 37, 38, 39, 42 (*2*) and 53.

(4) *Income-tax Officers* are the assessors. While section 64 of the Act specifies the particular Income-tax Officers by whom assessments shall be made, *i.e.*, prescribes that assessments shall be made in the case of a business by the Income-tax Officer of the area where the principal place of business is situated, and in all other cases by the Income-tax Officer of the area in which the assessee resides, sub-section (4) of that section provides that every Income-tax Officer shall have all the powers conferred by or under the Act on an Income-tax Officer in respect of any income, profits or gains accruing or arising or received within the area for which he is appointed. This particular provision was inserted mainly in order to permit of enquiries being made into the profits of a branch business by the Income-tax Officer of the place in which the branch is situated and in order to enable every Income-tax Officer to make enquiries regarding all income, profits and gains arising or accruing within the area to which he is posted, even though the assessment in respect of the particular income, profits or gains may not be made by him. Income-tax Commissioners should therefore secure by issuing instructions or otherwise that there is no overlapping in this matter and that the same person is not assessed to income-tax by more than one Income-tax Officer but should at the same time secure that all Income-tax Officers shall give the utmost assistance to the assessing Income-tax Officer in regard to any property, income, profits or gains within their respective areas which are liable to assessment elsewhere.

While it is intended that the work of making assessments, of hearing appeals and of passing orders in review shall ultimately be carried out by separate officials known as the Income-tax Officer, the Assistant Commissioner and the Commissioner, as a complete whole time staff for income-tax work has not yet been appointed in some of the provinces, section 5 (*4*) makes provision for the continuance, until such whole time staff is engaged, of the existing system under which individual officers exercise the powers of an assessing authority in respect of particular classes of income and of an *appellate authority in respect of others, while the reviewing* authority is in certain cases also the appellate authority.

While the income-tax staff will as a rule be appointed in provincial cadres, there are certain classes of cases for which it may be advisable that assessments should be made by an all-India staff. Such, for example, are the cases of military officers and of officers of other departments serving directly under the Government of India who are liable to transfer from one province to another; and there may be other cases such as the assessment of railway companies which at any time it may be considered advisable should be dealt with by a special officer for the whole of India Sub-section (*5*) of this section has been inserted to make provision for the appointment of special officers in such cases.

The officers specified in the 3rd, 4th and 5th columns of the schedule below have been appointed to perform all the functions of an Income-tax Officer, Assistant Commissioner of Income-tax and Commissioner of Income-tax, respectively, in respect of the persons specified in the corresponding entry in the 2nd column thereof.

SCHEDULE.

Serial No.	Persons	Officer appointed to perform the functions of—		
		Income-tax Officer.	Assistant Commissioner of Income-tax	Commissioner of Income-tax.
1	2	3	4	5
1	Employés of the Bengal *and North-Western* Railway	Income tax Officer, *Gorakhpur.*	Assistant Com*missioner of* Income-tax, Benares	Commissioner of *Income-tax*, United Provinces
2	[illegible] from Army estimates through the Controller of Military Accounts, *Eastern Command*, Meerut and Lucknow districts, Meerut	[illegible]	Assistant Commissioner of Income tax, Meerut	Do

SCHEDULE—*contd.*

Serial No.	Persons.	Officer appointed to perform the functions of—		
		Income-tax. Officer.	Assistant Commissioner of Income-tax.	Commissioner of Income-tax.
1	2	3	4	5
3	Employés of the British India Corporation Ltd. stationed at Rangoon.	Income-tax Officer, Cawnpore.	Assistant Commissioner of Income-tax, Cawnpore.	Commissioner of Income-tax, United Provinces.
4	Employés of the Assam-Bengal Railway.	Income-tax Officer, Chittagong.	Assistant Commissioner of Income-tax, Dacca.	Commissioner of Income-tax, Bengal.
4-A	Indian employés in Sind, Punjab and Delhi of Messrs. Ralli Brothers.	Income-tax Officer, B. Division, Karachi.	Assistant Commissioner of Income-tax, Sind.	Commissioner of Income-tax, Bombay.
5	European employés in British India and Indian employés in Bengal, Bihar and Orissa, Assam and the United Provinces of Messrs. Ralli Brothers.	Income-tax Officer, Calcutta, District IIIA.	Assistant Commissioner of Income-tax, Headquarters (at Calcutta).	Commissioner of Income-tax, Bengal
6	European employés of Messrs. Ralli Brothers in Berar.	Do.	Do.	Do.
7	European employés of the Imperial Tobacco Company, India *Limited, and the* Indian Leaf Tobacco Development Company Limited, in the provinces of Bombay, Madras, United Provinces, Punjab, Bengal, Bihar and Orissa and Assam.	Do.	Do.	Do.
8	European employés of the Tobacco Manufacturers (India) Limited, and the Printers (India) Limited, in the provinces of Bombay, Madras, United Provinces, Punjab, *Bengal, Bihar and* Orissa and Assam.	Income-tax Officer, Calcutta, District IIIA.	Assistant Commissioner of Income-tax Headquarters (at Calcutta).	Commissioner of Income-tax, Bengal.

SCHEDULE—*contd.*

Serial No	Persons	Officer appointed to perform the functions of— Income-tax Officer	Assistant Commissioner of Income-tax	Commissioner of Income-tax
1	2	3	4	5
9	Employés of the Bengal Nagpur Railway	Income-tax Officer, Railways and Miscellaneous Salaries Circle, Calcutta.	Assistant Commissioner of Income-tax, Calcutta	Commissioner of Income-tax, Bengal
10	Employes of the East Indian Railway	Do	Do .	Do.
11	Government servants serving outside Bengal who are under the audit of the Pay and Accounts Officers, Miscellaneous Central Departments and the Survey of India, Calcutta.	Do	Do .	Do
12	Military employés under the audit of the Controller of Military Accounts, Presidency and Assam District, Calcutta.	Do	Do .	Do
13	Officers of the Women's Medical Service and of the Junior Branch of the same	Income-tax Officer, Simla.	Assistant Commissioner of Income-tax, Ambala	Commissioner of Income-tax, Punjab.
14	Military employés stationed in Sind who are under the audit of the Controller of Military Accounts, R. A. F., Ambala	Income-tax Officer, Ambala	Assistant Commissioner of Income tax, Eastern Division, Punjab.	Do.
15	Employés of the Madras and Southern Mahratta Railway except those under the audit of the Audit Officer, Railway Collieries, Calcutta.	Income-tax Officer, 4th Circle, Madras.	Assistant Commissioner of Income-tax, Central Range, Madras.	Commissioner of Income-tax, Madras.
16	All Government servants who are under the audit of the Accountant-General, Madras, and the Deputy Accountant-General, Posts and Telegraphs, Madras, but do not reside in Burma or the Andaman Islands.	Income-tax Officer, 5th Circle, Madras	Assistant Commissioner of Income-tax, Central Range, Madras.	Commissioner of Income tax, Madras

SCHEDULE—*contd.*

Serial No.	Persons.	Officer appointed to perform the functions of—		
		Income tax Officer	Assistant Commissioner of Income tax.	Commissioner of Income tax
1	2	3	4	5
22	G [illegible] Telegraphs, Nagpur	[illegible] Off [illegible]	Assistant Com- [illegible] pur.	Commissioner of Income-tax, Central Provinces and Berar
23	Employés of the Eastern Bengal Railway.	Income-tax Officer, Railway and Miscellaneous Salaries Circle, Calcutta	Assistant Commissioner of Income tax, Calcutta.	Commissioner of Income tax, Bengal
24	Res [illegible] tax Act, 1922.	Income-tax Off [illegible]	...	Commissioner of Income-tax, Bombay.
24-A	Religious and charitable institutions outside British India not liable to income tax under section 4 (3) (i) and (ii) of the said Act applying for refund of tax deducted at source on interest on securities or for exemption certificates in respect thereof.	Do.	...	Do
25	Shareholders residing outside British India of a Company when the income of the non-resident shareholders arises in more than one British Indian Province.	Do.	Assistant Commissioner of Income tax, Bombay City.	Do.
26	All persons assessed under section 44-C.	Do.	Do.	Do.
27	Employés of the American United Presbyterian Mission, residing in the United Provinces, the Punjab and the North-West Frontier Province.	Income-tax Officer, Gujranwala.	Assistant Commissioner of Income tax, Lahore	Commissioner of Income tax, Punjab.

SCHEDULE—*concld.*

Serial No	Persons.	Officer appointed to perform the functions of— Income tax Officer.	Assistant Commissioner of Income-tax.	Commissioner of Income-tax.
1	2	3	4	5
36	Employés of the Indian Mental Hospital, Ranchi.	Income tax Officer, Salaries Circle, Ranchi.	Assistant Commissioner of Income-tax, Ranchi.	Commissioner of Income-tax, Bihar and Orissa.
37	Employés of the Lac Research institute, Namkum (near Ranchi)	Do.	Do.	Do.
38	Employés of the Rajputana Minerals Company, Ltd.	Income-tax Officer, Salaries, Bombay	Assistant Commissioner of Income-tax, Bombay City	Commissioner of Income-tax, Bombay.
39	*European Staff of* Messrs. Volkart Bros, working in the Punjab and Sind.	*Income-tax Officer*, B-Division, Karachi.	*Assistant Commissioner of* Income-tax, Sind	*Do.*

25. *Salaries.* (*Section 7.*)—The income taxable under this head includes not only fixed salaries or wages and annuities or pensions, but also any fees, commissions, perquisites or profits received in lieu of, or in addition to, salaries or wages which are paid to an employé by or on behalf of any employer. Under the Act of 1918 the income chargeable under this head applied only to "salaries" in the above sense when paid by or on behalf of Government, a local authority or company, any other public body or association or by or on behalf of any private employer who had entered into an agreement with the Income-tax Officer to recover the tax on behalf of Government, but under the present Act it applies to all salaries paid by or on behalf of every private employer, the obligation to deduct income-tax from salaries being under section 18 (2) of the Act an obligation on every employer.

A payment made on retirement, etc., to an employee from a private Provident Fund, that has been formed into a genuine Trust, cannot be regarded as a payment of salary within the meaning of section 7 (*1*) of the Indian Income-tax Act, XI-1922, because (for one thing) the trust is not the employee's employer. Such a payment is therefore not liable to taxation by deduction of tax at source.

Accumulated balances when paid to employees of *recognised* provident funds are however exempt from tax if they satisfy the provisions of section 58-G (*vide* paragraph 20-A).

which the whole or part is drawn under proper sanction by the Government servant concerned on a bill, should be taxed as salary by deduction at source. They are obviously fees, commissions, or perquisites received in addition to salary and paid by or on behalf of Government [section 7 (*1*).]

For classes or portions of "salaries" which are entirely exempt from tax, see paragraph 17.

Income under this head is included in the income of the year in which it is received irrespective of the period in respect of which it was earned, with the exception that where an officer of Government or any other employee takes an advance of pay, the tax is not chargeable on the advance, but the tax is charged on the full salary of the month in which the advance is recovered by deductions without any regard to the deduction. In cases where the payment of an assessee's salary in advance or in arrears makes his income assessable at a rate higher than that at which it would otherwise have been assessed, he may be granted relief under section 60 (*2*).

A portion of a salary withheld under the orders of a Court is liable to tax.

26. *Salaries paid in India but outside British India* [*Section* 7 (*2*).]—See paragraph 1 This sub section makes chargeable, under this head, salaries paid from Indian revenues to Government employés in any part of India and salaries paid by a local authority established in exercise of the powers of the Governor General in Council. All servants of Government or of such local authorities are, therefore, liable to pay tax on their salaries if they are employed in any part of India and irrespective of their nationality.

The words "or any servant of His Majesty" in this sub-section were inserted in the Act of 1918, so as to bring all servants of the Crown, whether British subjects or not within the purview of this sub-section, on the ground that it seemed unnecessary to give to persons who were not British subjects specially favourable treatment which was not accorded to British subjects

The pay of officers whose services have been lent to, and whose salaries are paid by, Indian States are not chargeable to income-tax under this section unless they are drawn or received in British India; but the leave allowances and pensions of such officers are chargeable to income-tax unless covered by any of the exemptions in paragraph 17. The Government of India recover contributions at fixed rates from the Indian States to meet the cost of leave allowances and pensions of officers in foreign service and make themselves responsible for paying the leave allowances and pensions of their employés earned in foreign service The portion of salaries of Government officers serving in Indian States, which is paid in the first instance by the Government of India but is subsequently recovered from the State concerned, is not liable to income-tax.

securities purchased through the Post Office and held in the custody of the Accountant-General, Posts and Telegraphs (*see* paragraph 17-A). Super-tax is, however, payable by the recipient in respect of such interest, since, under section 58 of the Act, the provisos to this section do not apply to super-tax.

For interest on other securities, which are entirely exempt from tax, see paragraphs 17 (7), (8), and (28).

For interest on securities held by Provident Funds, etc , see paragraph 21.

The interest on securities held by a Co-operative Society is liable to income-tax (see paragraph 17-A).

Where a bank or other concern engaged in business similar to that of a Bank receives deposits or loans in the course of its business and invests the money so borrowed as occasion arises, it should be allowed in computing its liability to income-tax to set off the entire *interest on such borrowings against its entire income liable to tax.* No attempt should be made, for example, to allocate a proportion of the borrowed money to investments in tax-free securities and to set off the interest on such proportion against the tax-free securities instead of against the taxable income.

But (as an exception to the foregoing) in the rare cases in which there is definite proof (not a mere inference) that a certain sum was specially borrowed by a Bank or similar concern for the purpose of investment in tax-free securities and has been so invested, the interest on the money so borrowed should be set off against the interest on *the tax-free securities* and not against the income liable to income-tax.

Assessees other than Banks or similar concerns may set off interest on money borrowed specifically for investment in taxable securities or shares, and so invested, against their income liable to tax taken as a whole, and not merely against the interest on such securities or the dividends on such shares. In all such cases there must be clear proof and not a mere inference that the money was specifically borrowed for such investment and actually invested. They cannot be allowed to set off against their income liable to tax interest on money borrowed for investment in tax-free *securities* and so invested.

Income-tax (but not super-tax) in respect of income chargeable under this head is deducted at the source [Section 18 (3)].

29. *Property. (Section 9)*—The tax is payable under this head in respect of property consisting of any building or lands appurtenant to a building by the owner of such property. Lands not attached to a building are not chargeable under this section The income derived from vacant lands let out in urban areas for the purpose, *e g.*, of storing materials is chargeable to the tax under section 12.

or other charge upon the property irrespective of the purpose for which the encumbrance was created.

The proviso to sub-section (*1*) of section 9 has no application to interest on money borrowed for business purposes even though such money may have been borrowed on the security of the assessee's property.

32. *Proof of expenditure where deductions are claimed in respect of "property".* [*Section 9 (1).*]—The allowance on account of repairs, [*viz.*, one-sixth of the annual value in the case specified in clause (*i*), and in the case specified in sub-clause (*ii*), the amount permitted by that clause] is a fixed allowance which should be granted without proof of the actual expenditure in any year and irrespective of the amount of such expenditure It should also be allowed in full even when an allowance is given for "vacancy" under section 9 (*1*) (*iii*) The allowances on account of the annual premium paid to insure the property against risk of damage or destruction or on account of annual charge or ground-rent or land revenue or of collection charges must be supported by proof of the actual expenditure. Interest that has fallen due on a mortgage should, however, be allowed as a deduction even though it may not have been actually paid.

33. *Property Insurance deductions* [*Section 9 (1) (iii).*]—The only insurance deduction permissible is the amount of the annual premium paid to insure the property against risk of damage or destruction. In some cases owners insure against loss of rent Where an owner asks for an allowance on account of the annual premium for such insurance it should be allowed if such owner agrees to pay tax on any amount recovered from the insurance company. Where no such allowance is claimed or allowed tax is not to be charged on the amount recovered from the insurance company.

33-A. *Property. "Charge"* [*Section 9 (1) (iv)*]—Deduction should be allowed on account of any "charge" secured on the property and not merely of the interest on such a charge.

34. *Property Collection charges* [*Section 9 (1) (vi)*]—As regards collection charges rule 7 fixes 6 per cent of the annual value as the maximum amount permissible Where a house has remained vacant for a period, this maximum, of course, would never be reached and in many cases there will be no collection charges. The *maximum* amount permissible should be reduced in all cases where a house has remained vacant for a period to 6 per cent of the annual value as diminished by the amount allowed in respect of vacancies. Proof must always be given of the collection charges having been incurred Rule 7 simply provides that, where there is proof of collection charges, such charges may be allowed subject to the provision that in no case shall the amount allowed on account of collection charges exceed 6 per cent of the annual value.

36. *Property. Limitation of total allowances.* [*Section 9 (1).*]—The proviso to section 9 (*1*), that the aggregate of the allowances made under that sub-section shall in no case exceed the annual value, was inserted owing to the new provision in section 24 providing for the set-off of losses under one head against income, profits or gains under any other head. Instances have occurred of buildings situated in extensive grounds or on valuable sites being mortgaged for sums the interest on which is far in excess of the "annual value". The result of this proviso is that the annual value of the property belonging to an assessee can in no case be reduced to a *minus* sum owing to the allowances, and that there can be no loss under this head to be set against income, profits or gains under any other head.

37. *Method of accounting*
under sections 10, 11 and 12
Court ruling, referred to in p
of the word "income" the provisions in the present Act have been so worded as to make it clear that as regards income, profits or gains from business, professional earnings or the other sources mentioned in section 12, no uniform method of accounting is prescribed for all tax-payers, and that every tax-payer may, so far as is possible, adopt such form and system of accounting as is best suited for his purposes. The only restrictions are that the method adopted must be one that clearly reflects the income of the assessee in respect of the fixed period of "the previous year" and that it is the one regularly employed by him for the purposes of his business. If the tax-payer does not regularly employ a method of accounting which clearly reflects his income for the "previous year," the computation will be made in such manner as in the opinion of the Income-tax Officer does clearly reflect it

There are two main systems of keeping accounts. There is firstly the cash basis system, where a record is kept of actual receipts and actual payments, entries being made only when money is actually collected or disbursed There is secondly, the mercantile accountancy system under which a profit and loss account is maintained and a comparison is made of the value of the stock in hand at the beginning and at the end of each year Under this latter system entries are made in the accounts on the date not of receipt of money or expenditure of money, but on the date of transactions irrespective of the date of payment When goods are sold, for example, an entry is made at once on the receipt side of the account, although no cash may be received at the time in payment of such goods; and an entry is similarly made on the debit side when a liability is incurred although payment on account of such liability may not be made at the time It will be the method of accounting adopted for or by the tax-payer, therefore, that will determine the period within which any item of gross revenue or any deduction therefrom is to be accounted for, and which will determine whether particular allowances are or are not permissible.

curred " according to the method of accounting upon the basis of which profits or gains are computed, *i.e.*, where the cash basis is adopted, it will be the date of actual payment that will determine the year in which such allowances may be made, whereas if the mercantile accountancy system is adopted, the allowances can be claimed in the year in which the liability to pay accrued.

38. *Method of accounting "regularly employed". (Section 13)* —The method of accounting regularly employed by an assessee for the purposes of his business should, so far as possible, be the method adopted for working out his profits for income-tax purposes, but the Income-tax Officer has to decide whether that method of accounting is the one regularly employed for the purposes of the assessee's business and whether it is such as to reflect clearly the taxable profits for the " previous year ". In most cases this should cause no difficulty. Doubtful cases should be referred to higher authorities. As an example of the principles to be followed in settling doubtful cases two instances of such cases are given. It is the practice amongst certain merchants to prepare their accounts on the basis of the mercantile accountancy system in respect of *transactions between themselves and members of their own community*, but on the basis of cash payments in the case of transactions between themselves and their customers Provided that the same system is continuously employed, there appears to be no reason why this particular practice should not be considered to be a " method of accounting regularly employed " Again there are cases where the various branches of a business are only closed once in three or five years and where the accounts of the branches are not annually incorporated in the head-quarters business's accounts. In such a case it might be possible to assess either on the average annual profits of the branches as disclosed by the accounts last filed or on the actual profits brought to account owing to particular branches closing in particular years

The cases in which an assessee desires to change his accounting system should be rare and where such a request is made, the Income-tax Officer in considering it should, as in the similar case of a demand for a change in the " previous year " (paragraph 6), if he is prepared to allow the change, take steps to secure that no profits escape taxation on account of the change While section 13 leaves it to the discretion of the Income-tax Officer to decide whether a particular system of accounting should be accepted or whether a change in the system of accounting should be allowed, the discretion of the Income-tax Officer in this matter can be questioned in the course of an appeal against an assessment under section 30, *i.e.*, it may be made one of the grounds of appeal in contesting the assessment of the profits

39. *Business (Section 10)* —" Any business " in sub-section (1) of the section means " any business or businesses "

40. *Business deductions. General* —While, as stated in paragraph 37, it is not possible, owing to the variety of accounting systems, to prescribe exhaustive lists of deductions that are or are

amounting to one lakh during the same year, the income to be assessed to income-tax from the money-lending business in that year will be *nil*. These examples will apply whether the assessee had previously been assessed to income-tax or not.

This instruction will also apply to the assessment of other traders, where loans have been made in connection with the business and in which the loans are of the nature of the business and the loss is a true trading loss

The irrecoverable loans in the sense referred to in this paragraph are sometimes confused with the " bad debts " described in paragraph 37, but they are of a totally different nature Money lent out on interest is the stock-in-trade of a money-lender or banker and the loss of such stock-in-trade can clearly be regarded as a trading loss like the loss of the stock-in-trade of any other trader where the loss is not covered by insurance In settling claims of this nature the question has always to be considered whether money-lending is, or is not, a part of the business of the trader in question. The investment of savings or occasional loans made to acquaintances cannot be considered to be loans made in the course of trading.

42. *Allowance on account of rent of business premises.* [*Section 10* (2) (*i*).]—The allowance referred to in this clause is only

no allowance on account of rent, is permissible since the owner is not liable to pay tax on the annual value of such premises under section 9 Where the trader resides in a part of the business premises, the full rental cannot be set against the profits and the Income-tax Officer must, in each case, determine the portion of the rent that may so be set off.

43. *Allowances on account of repairs of business premises.*—Where the assessee is himself the owner of his business premises, he is allowed as a deduction the amount spent on repairs each year on the portion of the premises used for the purposes of the business under section 10 (*2*) (*v*); where he is the tenant of the premises, he is, under section 10 (*2*) (*ii*), allowed the amount expended by him on repairs if his lease requires him to execute repairs Where the premises are occupied partly as a residence and partly for the purposes of a business, the same proportion of the disbursements on repairs should be permitted to be deducted as is taken in calculating the rent permissible under section 10 (*2*) (*i*).

The phrase " current repairs " in section 10, sub-section (*2*) (*v*) should be interpreted to mean such repairs required to keep building, machinery, plant and furniture, in serviceable condition, as are rendered necessary by ordinary wear and tear (as opposed to accidental or wilful damage or other unusual causes) and are of their nature recurrent (supposing that the owner displays reasonable care and prudence in keeping the asset, whatever it may be,

subscriptions or capital invested and the interest thereon and the Income-tax Officer should ascertain what particular recipients of these payments are liable to tax and should add the amount of interest that they have received to the income on which they would otherwise have been assessed, that is, he should assess the recipients direct.

45. *Business—Allowances in respect of insurance premia.* [*Section 10* (*2*) (*iv*).]—The allowances under this clause are restricted to insurance policies taken out against the risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the particular business of which the profits or gains are being calculated and no allowance can be made on account of *premia* in regard to other insurances Further, any sums not actually expended on *premia* but merely set aside by a company or firm as an insurance fund are simply a particular description of reserve and no allowance or deduction can be given in respect of such reserves

The Act does not contemplate the deduction of premia on account of insurance against a loss of profit. If, however, the owner of a business elects to claim any such allowance, he should signify his intention to the Income-tax Officer—and if he makes a declaration in writing, undertaking generally to pay the tax on any amounts recovered from an Insurance Company under any such policy or policies, the allowance will be granted in respect of the premia for any such policies that he may have taken out not more than a month before the date of such declaration or that he may take out subsequent thereto. Where no allowance is asked or allowed in respect of such policy, any sums received from the Insurance Company on account of the policy will not be liable to tax.

46. *Allowances in respect of depreciation* [*Section 10* (*2*) (*ii*).]—The allowances permissible under this clause are prescribed in rule 8 and the information that must be furnished in order to obtain an allowance is set out in rule 9. It is only the particular classes of buildings, machinery, plant or furniture mentioned in rule 8 in respect of which the depreciation allowance can be claimed, and the buildings, machinery, plant or furniture for which depreciation allowance is claimed must be used for the purposes of the particular business of which the profits or gains are being computed No allowance can be claimed on account of depreciation for example, of any portion of a building which is used as a residence by the assessee Further, the buildings, etc , must be the property of the assessee. No allowance can be claimed if they are leased from others.

Buildings belonging to the owner of a business and used by him in order to house his employés are buildings used for the purpose of business if the owner charges no rent If, however, rent is charged section 9 would apply

When a person succeeds to a business, the depreciation allowance due to him in respect of buildings, machinery, etc , taken

Whatever depreciation allowances are granted, it will be necessary to maintain an account showing the original cost to the assessee of the plant, the amount of the annual allowance, the amount of the allowances already granted and the balance still to be allowed.

The percentage allowance fixed in the rule for the permanent way of electric tramways only covers cases where the number of car miles per mile or track does not exceed 125,000 car miles per annum. Where the number of car miles per mile of track per annum exceeds 125,000 special terms will have to be made in each case. Similarly special consideration should be given to each case where there are special circumstances such as exceptional gradients, the compulsory use of wood paving, etc, tending to show that the car mileage does not fairly represent the wear and tear of the track. The cost of renewing concrete foundations should be allowed as a trading expense as and when incurred, provided that, if the renewed foundations are an improvement on the old ones, so much of the cost of the renewed foundations as represents such improvement should not be admitted as a trading expense Amounts received for the old materials, whenever renewals are effected, should be credited against the cost of the renewals, and if the old materials are not disposed of at the time or are used for other purposes, their estimated value should be deducted, subject to adjustment if necessary, as and when the old materials are disposed of. The percentages fixed for the depreciation of the permanent way are based upon the estimated life of a track from a consideration of the number of car miles per mile of track, and consequently these percentages may vary in connection with the same undertaking. It must be clearly understood that the revision of the life of a track need not necessarily be deferred till the whole track is renewed, because it may become clear before that date that revision is necessary either in the direction of increasing or decreasing the average life. As regards the rate for general plant, machinery and tools, all other plant and machinery including workshop tools but excluding loose implements, office furniture and small articles which require frequent renewals (expenditure on which is allowed as a business expense against revenue), should be lumped together and the rate of 5 per cent. depreciation should be allowed thereon in addition to the cost of repairs. No depreciation should be allowed on overhead equipment, *i.e*, trolley wires and connections: all expenditure on maintenance and renewals should be charged as working expenses, as and when incurred.

The item "Below ground—All to be charged to revenue" in exception (1) under item 6 (Mineral oil companies)—B (Field operations), in Rule 8 means that on the plant in question (pipes, etc.) below ground, depreciation is to be allowed at 100 per cent, so that if the profits are insufficient in any year to allow of the full 100 per cent., being written off against them, the balance can be carried forward, under proviso (*b*) to section 10 (2) (*vi*) of the Act to subsequent years

securities constituting the reserve fund of a bank or other company) is realised, the transaction is a capital transaction, and no account should be taken for income-tax purposes of any profit or loss resulting from the sale. On the other hand, where an individual company or firm habitually uses part of his or its resources in the purchase of securities or shares with a view to obtaining profit on their sale and the subsequent re-investment of the proceeds, the individual, company or firm is, in altering his or its investments, carrying on a trade for the sake of obtaining profit therefrom, and the profits secured or losses incurred are trade profits or losses which must be taken into account in determining the assessment to income-tax It will, therefore, always be a question of fact to be decided on the merits of each case whether the changes in investment are of sufficiently systematic a character to constitute the exercise of a trade, but if they are, the profits therefrom are liable to assessment, and an allowance must be made for any losses in calculating the amount of tax payable

47. *Business—Obsolescence allowances* [*Section 10* (2) (*vii*)]—It must be particularly noted that the allowances under this clause can only be given where the machinery or plant *becomes obsolete*. Where machinery or plant is sold for reasons other than that it has become obsolete, no allowance can be given. Where a machine is sold no allowance can be given if the facts present evidence that the machine is not obsolete.

The amount allowed for obsolescence is, again, calculated upon the original cost *to the owner* The amount to be given is the amount of such original cost to the owner as reduced by the depreciation allowances under clause (*vi*) and the amount for which the machine is actually sold or its scrap value For example, a machine costing Rs. 10,000 on which a depreciation allowance of 10 per cent. of the original cost is admissible is sold after 5 years for Rs. 2,000. The original owner gets Rs 5,000 for depreciation and nothing for obsolescence as the machine is not scrapped or sold on account of obsolescence. The second owner gets also an allowance at the rate of 10 per cent., and as the cost of the machine to him was Rs. 2,000, his annual allowance is Rs. 200 If owing to its becoming out of date the machine is scrapped useless after three years then in the year in which it is so scrapped the second owner can claim Rs 1,400 for obsolescence No allowance for obsolescence is obviously permissible if the machine lasts 10 years or more *with any one owner* This will apply also where the " second owner " is not merely a purchaser but a " successor " to the business of his predecessor to which the machine originally belonged.

47-A. *Business—Allowance on account of dead or useless animals* [*Section 10* (2) (*vii-a*)]—The allowance in respect of live stock that has died or become permanently useless to the assessee should be granted whether the live stock is replaced or not.

48. *Allowance on account of rates or taxes* [*Section 10* (2) (*viii*).]—The allowance under this clause covers only the land

Compensation or Accident Insurance Act (VIII of 1923) should be treated as business expenses and allowed under section 10 (2) (*ix*) as a deduction in assessing income from business.

The following principle should be observed in dealing with claims that *boná fide* expenditure for the welfare of the employés of a business should be allowed as a business expense No contributions towards expenditure incurred by outside bodies which may benefit the employés of a company or firm incidentally with members of the general public, should be allowed, such as contributions for the support of clubs, recreation grounds, religious institutions, dispensaries, hospitals, schools and the like If, on the other hand, an assessee maintains a school or a dispensary solely for the benefit of his employes reasonable expenditure on the *upkeep* of such an institution should be allowed as a working expense. Similarly, expenditure incurred in the maintenance of a conservancy staff employed to keep the surroundings of the dwellings of the employés of a concern in a sanitary condition should be allowed In no case, however, should any capital expenditure be allowed, such as, for example, the amounts expended on the construction of latrines, drains, water-works or hospitals.

Sums embezzled by an employee are an admissible charge against the business of his employer

Assessees sometimes receive from their constituents payments intended to cover Railway expenses, cooly charges, etc., which they have to incur in the course of their business When payments are made out of the sums and are debited specifically to constituents they may be allowed as deductions from the assessable income, without insisting on strict proof of payment by the production of vouchers, provided that it is reasonably certain that the payments have been made.

Indian traders and business men charge their customers or clients a small fee on each transaction—for example so many pies on each bag of some commodity sold—the proceeds of which are supposed to be devoted to various religious, charitable or educational purposes Such *customary* subscriptions by clients and customers for religious or charitable (including educational) purposes, and the corresponding expenditure by the assessee, should be left out of account altogether in computing the taxable income, provided that the Income-tax Officer is reasonably satisfied that the sums in question are really applied by the assessee ultimately (and not necessarily in the year of collection) to the object for which they were ostensibly collected No attempt should be made to separate these subscriptions from the trade expenses of the customers or clients to whom they are charged and to disallow them as not being trade expenses

Sums received for political purposes should be included in income and the corresponding expenditure on these purposes should not be allowed as a deduction from the taxable income.

Strictly speaking, the cost of audits and similar operations conducted specially for income-tax purposes, whether in connection

as Doctors, Accountants, Lawyers and Architects, can be allowed as an expense under Section 11 (2). The cost of original or additional purchases cannot be allowed.

52. *Income from "other sources".—Deductions. (Section 12.)*—The interest paid on money borrowed for the purchase of shares or securities can only be set against the income obtained from the shares or securities where it is proved either by a banker's certificate or otherwise that the borrowing has been definitely and solely for that purpose; but where such proof is afforded, an allowance should be given.

53. *Deductions on account of taxes paid.*—No deduction is permissible in computing the income, profits or gains on account of any taxes or rates paid in respect of such income, profits or gains except that a local rate or tax which is payable irrespective of whether profits are made or not (see paragraph 48) is to be allowed as deduction from income from business. Section 10 (2) (*viii*) of the Act allows as a deduction from business profits sums paid on account of land revenue, local rates or municipal taxes in respect of premises used for the purposes of a business. This specific provision has been inserted because the local rates paid on account of such premises are usually in the nature of a payment for services rendered (*e g.*, by supply of water, conservancy arrangements, etc.), but that allowance is closely restricted to a local tax or rate levied *in respect of the premises* used for the purpose of the business. No deduction is allowed for any other local rate or tax such as, for example, local taxes varying according to the income or profits of a business. Nor is any deduction on account of a local rate or tax on property allowed from the annual value of property which is taxable under section 9. Similarly no allowance is permissible on account of income-tax or super-tax paid by an assessee. Where property, profits or gains are liable to taxation in other countries or by other authorities in British India all these authorities are taxing the same property or profits for different purposes. In the Patna High Court, Case No 102 of 1920 in the matter of Raja Joyti Prasad Singh Deo of Kashipur (I, Srinivasan's Tax Cases, page 103), it was held that the amounts paid for cases by a person deriving an income from rent of collieries and from royalties on the amount of coal raised from the collieries are not to be deducted in computing the amount of his assessable income, and it was clearly stated that "the payment of a tax which is conditional on the making of an income and which has to be calculated on the amount of such income after it has come into existence cannot be said to be expenditure for the making of such income"

Again in the Madras High Court, Case No 11 of 1920, Chief Commissioner of Income-tax, Madras, *versus* The Eastern Exten- [illegible] (I, Srinivasan's Tax [illegible] the profits of a non- [illegible] 33, the taxes payable [illegible] the company are not to be deducted.

While income-tax is leviable on the profits of a registered firm at the maximum rate (see Finance Act), and while under section 48 (*2*) a member of a registered firm is entitled to get a refund in cases where the maximum rate is greater than the rate applicable to his total income, it is desirable that, so far as possible, such refunds should be avoided.

The question of refund does not arise if the personal income of none of the partners liable to Indian Income-tax including his share in the Firm (whether he be resident or non-resident) is less than Rs. 40,000. In other cases, if each of the non-resident partners is a British subject or a subject of an Indian State and produces with his individual return of income adequate evidence of the amount of his foreign income that is to be taken into account in determining his claim to a refund, and all the resident partners (if any) file returns of their individual incomes, the Income-tax Officer, on being satisfied that the whole of the profits of the registered firm are accounted for in these personal statements, should charge the partners direct at the rate appropriate to their total income

In view of sub-section 5 of section 48, this procedure cannot be applied to the following cases:—

(1) Firms in which one partner at least is a non-resident foreign subject (other than a subject of an Indian State) to whom no refund can be due in any case.

(2) Firms in which one partner at least is a non-resident British subject or subject of an Indian State to whom a refund may or may not be due—that is, who has not yet produced adequate evidence as to the amount of his foreign income.

(3) Firms in which in addition to non-resident partners there is any resident partner who has not filed a return of his total income.

The demand notice in respect of the profits of such firms must be addressed to the firm, and no individual assessments should be made on, or demand notices issued to the partners in respect of their shares of the profits of the firm The position will be just as though the firm were an *unregistered firm* If a partner has other income he will be assessed on that separately, and of course his total income will include his share of the profits of the firm The [illegible] *profits* *Separate assessments on partners will also have to be* made for super-tax, if necessary.

For the method of setting-off a loss of profits of a registered firm against other income of a partner see paragraph 72

In computing the total income of a member of a registered firm or unregistered firm for the purposes of income-tax or super-tax

Contributions to the Widows, Orphans and Old Age Contributory Pension Fund, 1925, are exempt from income-tax since they are deducted under the authority of Government from the salaries of the soldiers concerned for the purpose of securing to them a deferred annuity and of making provision for their wives and children.

Compulsory allotments from a soldier's pay made to his wife in England under Article 886 of Royal Warrant for Pay, are exempt from income-tax since they are deducted under the authority of Government for purposes of making provision whether present or future for the wife.

Deductions at source on account of contributions made by an officer to provide passage money for his widow and orphans under the Indian Military Service Family Pension Resolutions and the *Indian Military Widows and Orphans Funds Regulations* are exempt from income-tax as the contributions are in the nature of life insurance premia. Under the rules, a certificate of health is required before an officer can contribute and the contribution which he has to pay is regulated according to the age of the officer concerned.

Out of the premia paid in respect of a policy that covers the risks of sickness and accidental injury and also the risk of death, *only so much as is attributable to the risk of death (from whatsoever cause)* is admissible as deduction from the income liable to tax. The portion of the premia so attributable should be settled in consultation with the Insurance Company concerned, whose formula should be accepted unless there appears to be some strong ground for modifying it.

No rebate of income-tax is allowed on any sum withdrawn by an assessee from his Provident Fund in order to pay his life insurance premium.

Rebate of income-tax in respect of a premium paid on account of life insurance is admissible to a partner of a registered firm individually whose income is taxed at source, in addition to the refund of tax to which he may be entitled under section 48

It is to be particularly noted that the insurances in respect of which this concession is granted are insurances *on the life of the assessee himself or of his wife*, and not any other form of insurance whatsoever. The solitary exception is in the case of a *Hindu* undivided family in the case of which insurances are permissible *on the life* of any male member of the family or of the wife of any such member and not merely on the life of the head or manager of the family.

For the purpose of an abatement claimed by an assessee under this section insurance premia payable in sterling should be converted at the rate of exchange in force on the day on which the premium payment was made in cases where the assessee is unable to state the actual cost of remittance.

abatement claimed under this section exceeds one-sixth of the salary of the officers concerned. This can be looked after by the Income-tax Officer to whom returns are furnished under section 21. The deducting authority should however see that claims for such abatements are made within the period prescribed

It is to be particularly noted that this abatement does not apply to super-tax, section 15 being made inapplicable to super-tax by section 58.

57. *Tax deducted or collected at source to be included in income.*—Section 16 (2) (which provides that the amount received by a shareholder in a company by way of dividend shall be increased by the amount of income-tax payable by the company in respect of the dividend received) and section 18 (*4*) (which provides that where income-tax is deducted at the source from salaries and interest on securities, the tax so deducted shall, for the purposes of computing the income of an assessee, be deemed to be income received) have been inserted in order to make it clear that in the cases of taxation at the source and of the deduction of tax at the source it is the gross amount of the income (*i.e.*, including the tax deducted) which is to be taken into account in determining the rate at which an assessee shall be liable to income-tax on the rest of his income and also his income for liability to super-tax.

58. ... '*income above a certain* ... is designed to remedy ... here an assessee with an income just in excess of one of the stages in the Finance Act and therefore liable to pay income-tax at a higher rate than if his income were just below that stage, found himself, after the payment of the tax, worse off than he would have been, had his taxable income been below that stage.

Illustration.—The amounts of tax given in the illustrations below include surcharge of 25 per cent imposed by the Indian Finance (Supplementary and Extending) Act, 1931, except in the case of incomes below Rs. 2,000. Tax on incomes between Rs. 1,000 and 1,999 has been calculated at 4 pies in the rupee

Income	Tax payable if section 17 had not been passed	Tax payable under section 17
999	*Nil*	*Nil*
1,000	20-13	1-0
1,020	21-4	21-0
1,999	41-10	41-10
2,000	78-2	42-10
2,020	78-15	62-10
4,999	195-5	195-5
5,000	293-0	196-5

The marginal relief allowed under section 17 and the exemptions referred to in section 7 (*1*), proviso to section 8, and section 15 (*1*) should not be regarded as alternatives. The correct method of

the Government of India within the period specified in rule 10 along with a statement giving the details shown in rules 11 and 12. Such deductions of income-tax are under sub-section (5) of section 18, treated as payments of income-tax on behalf of the persons from whose income or interest the deduction was made and credit is given to them in the assessment of their income if an assessment is made of their other income. The form of return of income that has to be made under section 22 (2) prescribed in rule 19, therefore, provides for the tax previously charged upon the income being set off against any additional charge, while section 48 (3) provides as an alternative for a refund in cases where the rate deducted is greater than that applicable to the total income of the assessee.

Section 18 (2) (a) of the Act provides that all payments on
and on behalf of Government
ich tax is deducted at source
United Kingdom or a Colony
to Government servants on leave in the United Kingdom or the Colony has been exempted from tax, *vide* paragraphs 17 and 27. Any sterling overseas pay or other sum that may be paid in the United Kingdom or a Colony to an officer on leave in the United Kingdom or the Colony on account of his salary while on leave is, therefore, exempt from income-tax The fact that a part of the leave salary is drawn in India does not affect the exemption of the balance drawn in the United Kingdom or a Colony The part of the leave salary that is paid in sterling in the United Kingdom or a Colony to an officer on leave in the United Kingdom or a Colony should not, therefore, be included in the income from which tax is deducted at source by the officer paying him the rupee portion of the leave salary in India. The same principle applies to other payments falling under "salaries" within the meaning of section 7 of the Act made partly in India and partly out of India and exempt under any notification issued under section 60 of the Act
an officer on
respective of
also vacation
on vacation
therein.

Any person required to make a deduction under section 18 who fails to do so, may himself, under sub-section (7) be deemed to be personally in default in respect of the tax while he is also liable to be prosecuted for an offence punishable under section 51 (a) A penalty can also be imposed under section 46 (1) for such default

Persons making deductions at the source are indemnified for the deduction under section 65

The provisions of section 18 do not apply to super-tax (section 58).

The provisions of this section obviously cannot apply to cases

convenience of themselves and their employés as, if such rebate is not given when the tax is deducted at the source, it may be claimed by the employé in the *following year, if he is assessed under section* 23, either as a refund or as a set-off against any amount due by him.

As regards the meaning of the word "salaries" see paragraph 25.

For the deduction from "salaries" of arrears of tax due see paragraph 91.

61. *Deduction at source of tax on "interest on securities".*—(See paragraph 28.) The only securities of the Government of India (other than income-tax free securities) from the interest on which income-tax is not deducted in advance are Treasury Bills

As the person paying interest on securities has no information regarding the total income of the person to whom the payment is made, section 18 (*3*) provides that deductions of income-tax from "interest on securities" shall be made at the maximum rate fixed by the Finance Act. Where the total income of the person receiving the interet on securities is less than the income to which the maximum rate applies, he is entitled, under the provisions of section 48 (*3*), to claim a refund In order to simplify the proce-

issued by local authorities and companies and covers the case of securities payable to bearer. It frequently happens, however, that security-holders hand over their securities and bonds to their bankers for collection. In that event the certificate given by the person deducting the income-tax from the security would be given to a bank for a whole block of securities In such a case the Income-tax Officer should accept a certificate from the bank in the following form, and act upon it as if it were a certificate received direct from the persons deducting income-tax from the security —

"We hereby certify that interest on the various securities specified on the back hereof was collected by us on behalf of and that we received payment or were credited with the proceeds thereof (less *income-tax*) as stated on the other side amounting to Rs

The securities specified are covered by certificates issued to the Bank under section 18 (*9*) of the Income-tax Act, 1922

Signature of Banker

Address

Date

To be signed by the claimant

total income. In such cases the Income-tax Officer may issue a certificate authorising the person paying the interest on securities to make no deduction of tax or to deduct tax at a lower rate than the maximum. The certificates will be granted to residents outside British India by the Income-tax Officer, Non-residents Refund Circle, Bombay, and to others by the Income-tax Officers concerned. Such a certificate might be in the following form:—

Income-tax Office
Dated 193 .

To

I hereby authorise (1)

to deduct income-tax at the rate of (2) pies in the rupee when paying the interest on the following securities to their present holder (3) . This authorisation will remain in force until cancelled by me.

Description of securities

(1) Name and address of person paying the interest (2) Rate of Income-tax sanctioned (3) Name of person receiving interest

Income-tax Officer.

Such certificates when issued should remain in force until they are cancelled and should not be required to be renewed annually.

When the owner of a security to whom a certificate is granted

of the security granted by the Income-tax Officer becomes inoperative. To avoid the possibility of paying officers refusing to act on the exemption certificate in such circumstances, Treasury Officers have been instructed to act on such certificates, when presented in respect of securities that have been endorsed to banks for collection of the interest, if together with the exemption certificate a declaration by the bank is presented to the effect that the security continues to be the property of the person named as the owner in the exemption certificate.

The Income-tax Officers mentioned will in turn grant exemption certificates in the form prescribed in paragraph 61. The exemption certificates will be issued in duplicate in regard to securities in the form of stock certificates or Promissory notes, one copy being sent to the State or the Ruler concerned and the other for purposes of registration direct in the case of stock certificates to the Public Debt Office of domicile where the stock certificate is registered and in the case of Promissory notes to the Public Debt Office or the Treasury Officer responsible for paying interest thereon.

As regards Bearer Bonds, the certificates will be issued in triplicate, the original being sent to the State or the Ruler concerned, the duplicate copy to the treasury responsible for payment of coupon relating thereto and the triplicate copy to the Public Debt Office within whose sphere such treasury is situated.

The exemption certificate pertaining to securities in the form of promissory notes or bearer bonds given to the State or the Ruler concerned should be produced before the Public Debt Office or the treasury each time the promissory note or the coupon attached to the bearer bond is presented for payment of interest

In the case of stock certificates or promissory notes, an exemption certificate will remain valid until either

(a) it is cancelled by the Income-tax Officer, or

(b) the security is transferred to some other person than the State or the Ruler in whose name it stood at the time when the certificate was issued, or

(c) the security is changed from one form into another, *e g*, from a stock certificate into promissory notes or bearer bonds or *vice versâ*, or is renewed.

In the case of bearer bonds, a fresh certificate will be required to cover each interest payment.

The above orders refer to *Government* securities only, the interest on which is exempt in the case of Indian States as well as Indian Princes or Chiefs as stated above As regards other securities, *viz.*, those of local authorities and companies referred to in section 8 of the Act, only Indian States are exempt In order to have exemption certificates for such securities, the State concerned will similarly send a certificate stating that it is the owner of the securities for which exemption is claimed through its Political Agent or Resident to the Income-tax Officer within whose jurisdiction the Public Debt Office or the office of the local authority or company is situate and on receipt thereof that officer will grant an exemption certificate in accordance with the above directions sending a duplicate thereof at the same time to the authority empowered to pay interest on the securities concerned Nothing in these instructions relates to dividends of companies.

IMPERIAL BANK OF INDIA, DEPOSITORS' DEPARTMENT,

Calcutta *193* .

Superintendent.

Description of shares.	Holding.	Period	Date of declaration of the dividends.	Date of receipt of dividends.	Amount of dividends.

To be signed by claimant.

I hereby declare that the shares on which dividends as above specified have been received are my own property, and were in the possession of the Imperial Bank of India, Calcutta, at the time when these dividends were realized.

Signature.

Date

63. *Certificate by a company to shareholders receiving dividends.* (*Section 20.*)—The profits of a company are charged to income-tax at the maximum rate irrespective of what the amount of the profits may be (*see* Finance Act), and the shareholder of a company is, under section 48 (*1*) of the Act, entitled to claim a refund on proof to the Income-tax Officer that the maximum rate of income-tax is greater than the rate applicable to his "total

N.B—The safe custody receipts and the Bank's pass book to be produced in support of any claim

certificates that tax has been levied in respect of the dividends at the rate current on the date on which the dividends were *declared* since this is the rate to be taken into account in dealing with a claim for a refund under section 48 *(1)*.

The form of certificate also provides for cases such as that of the tea companies which *do not pay income-tax on their entire* profits and gains distributed as dividends.

The amount of income-tax so assumed to be payable by the company in respect of the dividend declared has, under the provisions of section 16 (2), to be added to the net dividend received in calculating the total income of the individual shareholder

The following instructions may with advantage be followed by *persons granting* certificates prescribed by section 20 of the Act:--

(1) The statutory form of certificate of deduction of income-tax prescribed by rule 14 of the Indian Income-tax Rules *should invariably be used*

(2) Either (*a*) the certificate should be printed on the same sheet of paper as the actual warrant with a line of per-
f
d
e
b
T...
behalf of their constituents and companies send the banks consolidated dividend warrants in payment of all the dividends due in respect of the block of shares for which the bank is acting, and at the same time send separate certificates for the share-holders by whom the shares are owned. In such a case if certificates are issued to a Bank for say twenty constituents, relating to dividend warrant No. 1, the certificates should be numbered by hand *1/1*, *1/2*, *1/3* to *1/20*

(3) The practice adopted by certain companies of either attaching red slips to the certificates drawing the attention of recipients to the need for their careful preservation for a year or two or of printing this caution in red ink on the face of the certificate may be generally followed

(4) A note should be printed on the certificate to the effect that share-holders may claim refund of tax under section 48 *(1) of the Act in respect of their dividends if their* personal rate of tax is less than the maximum rate

64. *Annual return of employés.* (*Section 21.*)—Under section 21 read with rules 15, 16 and 17 a return in the form prescribed in rule 17 must be made of all employés deriving an income of Rs 1,000 per annum or over by the Government officers mentioned in

rule 15, by every private employer and by, in the case of local authorities, companies or other public bodies or associations, the "principal officer" (see paragraph 7) "or the prescribed person". The provision that in the last mentioned case the return is to be made either by the principal officer or "the prescribed person" is designed to avoid difficulties experienced particularly in the case of companies, owing to the provision of the Act of 1918 which required that the return should always be made by the "principal officer". Where a company, for example, has got several places of business, it may be more convenient for the company that the returns under this section should be made not by the principal officer at the headquarters of the company but by officers at different branches, since this particular return has as a rule to be made to the local Income-tax Officer, i.e., to the Income-tax Officer of the place where the employés happen to reside. The liability for making this return remains under section 21 with the principal officer unless another person is prescribed in the case of particular companies. Such a person must be prescribed by means of a rule made by the Central Board of Revenue [see section 2 (16) and section 59 (2) (e)]. The object of the return is to enable Income-tax Officers to see that the tax has been deducted at the source under section 18 (2), to arrange for adjustments where the collections at the source have not been made correctly and to assess "salaried" persons under section 23, whether the tax has been collected at the source or not, where the salaried persons have other income than "salary".

This section prescribes that the return must be delivered to the Income-tax Officer but does not state to what particular Income-tax Officer the return should be made. Every Income-tax Officer has, under the provisions of section 64 (5), all powers conferred by or under the Act on an Income-tax Officer in respect of any income accruing or arising or received within the area for which he is appointed, irrespective of whether the particular income is assessed by him or not. In most cases it is convenient that this return should be made to the Income-tax Officer of the area in which the employées reside, but in some cases it may be more convenient that the return should be made to the Income-tax Officer of the area in which the headquarters of a wide spread business is situated. It is for the Income-tax Commissioner in each doubtful case to decide to what particular Income-tax Officer this return should be sent.

The return prescribed under this section is the return of all employés who during the period of 12 months ending 31st March last were in receipt of salary of not less than the prescribed amount of Rs. 1,000, and the return must be furnished to the Income-tax Officer in the proper form before the 1st of May. The obligation to make this return is a statutory one and no preliminary notice or request from the Income-tax Officer is required. Failure to furnish this return is punishable under section 51 (c) of the Act.

65. *Return of income by companies.* [*Section 22 (1).*]—The return of the total income of a company must be furnished to the

Income-tax Officer before the 15th day of June in each year in the form prescribed in rule 18, which also contains the form of the verification of such return. The obligation to make this return is a statutory obligation upon the "principal officer" (see paragraph 7) of the company, and it is not necessary that the Income-tax Officer should send any preliminary notice or request to the company or the principal officer concerned. Failure to furnish this return is punishable under section 51 (*c*) of the Act.

66. *Return of income by persons other than companies. [Section 22 (2).]—The form of return of total income of individuals* firms or Hindu undivided families is prescribed in rule 19 which also prescribes the form of the verification of such return. In this case no statutory obligation rests upon the individual, firm or Hindu undivided family to make such a return until a notice has first been served by the Income-tax Officer requiring such a return. The notice must allow a period of 30 days for the furnishing of the return. If, however, on receipt of such notice, the return is not furnished within due time, such failure to make a return is punishable under section 51 (*c*) of the Act.

A return under section 22 on which the word "*loss*" has been written, without any figures, or in which '*nil*' has been entered against each item, is not a valid return (*cf.* Calcutta High Court case Ram Kissendas Bagri *versus* Commissioner of Income-tax, Bengal, II Srinivasan's Tax Cases, p. 324). If, therefore, such a return is filed by any person, the Income-tax Officer can proceed after issuing a notice under section 22 (*4*), and making enquiries, to assess him under section 23 (*4*) if he finds that such a course is justifiable.

67. *Consequences of failure to furnish a return of income.*— Where a return is not furnished in due time, whether it be a statutory return which companies are required to furnish by the 15th of June under section 22 (*1*), or whether it be the return which other persons are required to furnish under section 22 (*2*) on receipt of a notice from the Income-tax Officer calling upon them to do so, the person failing to make the return is not only liable to be prosecuted under section 51 (c) but no appeal lies under the proviso to section 30 (*1*) of the Act against any assessment made by the Income-tax Officer upon the company or other person failing to make a return In the case of a registered firm, the Income-tax Officer may also cancel its registration but not until 14 days have elapsed from the issue of a notice by the Income-tax Officer to the firm intimating his intention to do so.

Failure to make a return, therefore, deprives the person at fault of any remedy whatsoever against the assessment subsequently made, except the remedy specified in section 27 Under that section a person failing to make a return may within one month after the receipt of a notice of demand of the tax apply to the Income-tax Officer, and if he satisfies him that he was prevented

The returns under section 19-A, or section 22, or sub-sect of section 26-A, or sub-section (2) of section 32, or sub-section section 33-A, must be "verified in the prescribed manner," under section 52 of the Act a false statement in any such verific is an offence punishable under section 177 of the Indian Penal C

Apart from these legal penalties, under section 28 of the Ac the Income-tax Officer, the Assistant Commissioner or the Comm sioner is satisfied that an assessee has concealed the particulars his income or has deliberately furnished inaccurate particula of such income and has thereby returned it below the real amoun he may direct that the assessee shall pay a penalty not exceedin the amount of the tax which would have been avoided if the retur had been accepted as correct If the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under the Act governing such distribution and any partner has thereby returned his income below its real amount, the Income-tax Officer, Assistant Commissioner or Commissioner, as the case may be, may impose similar penalty on the partner concerned and no refund or other adjustment shall be claimable by any other partner on this account

Penalty under section 28 is leviable in the course of any proceedings under the Act provided that the facts justifying the imposition of a penalty under the section are established. There is nothing in either section 28 or section 34 to preclude the imposition of a penalty in the course of proceedings under section 34 in respect of the original return under section 22 (2), if the facts of the case justify the imposition of such a penalty

Clause (4) of section 28, however, provides that where a penal assessment under that section is imposed by the revenue authorities, no criminal prosecution for an offence shall be instituted on the same facts. It is obviously not desirable that there should be room for a possible conflict between the revenue and judicial authorities, and it is also unreasonable that a double punishment should be provided for

A criminal prosecution cannot, under section 53 (1) of the Act, be instituted except at the instance of an Assistant Commissioner In most cases action under section 28 will be effective although in more serious cases a prosecution might be launched

69. *Production of accounts* [*Section 22 (4)*]—Under sub-section (4) of section 22 the Income-tax Officer is empowered to call upon any person liable to make a return to produce such accounts or documents as he may require. It does not, however, empower him to ask the assessees to prepare accounts like a profit and loss account which they do not already possess and do not require for their own purposes; all that it empowers the Income-tax Officer to do is to call for accounts and documents which are, or are believed to be, in existence. The production of accounts may be called for whether a return has or has not been made. As stated

duced evidence of the correctness of his return. If an assessee fails when required by an order under section 23 (2) to attend or to produce evidence in support of his return, he is not liable to any penalty under section 51, but failure to comply with such orders has the result of placing the assessee in exactly the same position as a person who failed originally to make a return [see section 23 (4)], that is, he may not appeal against the order of assessment or take any action other than action under section 27 as described in paragraph 67. If the assessee is a *registered* firm, the Income-tax Officer may cancel its registration.

Under section 23 (3), the Income-tax Officer is empowered to utilise any evidence bearing on the assessment which he may obtain of his own motion, while under sections 37 and 38, he can enforce the attendance of any person for this purpose and compel the production of the information that he requires.

The following special instructions should be observed in calling for information from railway administrations:—

(i) The information must be relevant to an individual assessment Income-tax Officers should not, for instance, ask for a complete statement of all consignments to or from a particular station

(ii) The demand for information must be couched in definite terms For instance it must state whether the particulars are required with regard to outgoing or incoming consignments and name the stations with regard to which the information should be collected

(iii) The requisition for information should always be sent to the Agent of the Railway administration concerned. There is no objection, however, to Railway officers furnishing information direct to the income-tax authorities without the intervention of the Agent where the Agent has no objection to their doing so.

Section 37 gives power to call for railway books

Except as provided in section 19A and Rules 42 and 43, a company should not be required to furnish the Income-tax Officer [illegible] [illegible] [illegible]-cular period Such a duty would be burdensome to the company with no corresponding advantage to the administration. It is for this reason that in section 39 of the Act provision is made that the share register, the register of debenture holders and of mortgagees of any company are open to the inspection of the income-tax authorities, *who may also take copies or cause copies to be taken* of any entries in such registers. Since the power to inspect, and take copies of such register is specifically conferred by section 39, no income-tax authorities utilising these special powers can be called upon to pay any fee for inspection or copies under the Companies Act.

it is accorded proceed to assess accordingly. The Assistant Com-

Section 23-A is not one of the sections mentioned in section 58. Consequently "Income-tax" in section 23-A (*1*) and (*2*) means "Income-tax and super-tax". It follows that the Income-tax Officer under these sub-sections must refrain from determining the amount of their income-tax or super-tax payable by the firm, association or company.

72. *Set-off of loss under one head of income against income under another head.*—Under the Act of 1918 it was the aggregate amount chargeable under each of the separate heads mentioned in sections 7 to 12 of the Act that determined the total and taxable income of an assessee, so that when a person carried on a trade or profession and also had an income from house property, if he had actually incurred a loss from the trade or profession, the figure [illegible] -mount of the [illegible] Under the [illegible]

may now be charged against [illegible] year. No claim can, however, [illegible] who has been admitted to the [illegible] off under sub-section (*2*) of section 24 in respect of his share of the loss sustained by the firm See paragraph 10.

Sub-section (*2*) of section 24 only applies specifically to the case of a registered firm but the Madras High Court has held that under the provisions of section 24 (*1*) a partner in an unregistered firm is entitled to set-off his share of the net loss incurred by the firm in the same circumstances and to exactly the same extent as a partner in a registered firm. It has been decided to accept that decision. The result is as follows. A firm owning property or having income from a business and being in receipt of interest on securities would, under the provisions of sub-section (*1*), be entitled to set-off a loss from the business against its income chargeable in respect of interest on securities under section 8 or property under section 9. But it might happen that a firm might incur a net loss, in which case it would not be liable to tax. Sub-section (*2*) specifically provides for such a case.

Illustration.—A firm has property the annual value of which is Rs. 2,000, has income from interest on securities amounting to Rs. 1,000 and carries on a business from which it incurs in one year a loss of Rs. 10,000. The firm is entitled under the provisions of sub-section (*1*) of section 24 to set-off the loss from business against the annual value of the property and the interest on securities, and its total income would be *minus* Rs 7,000. A who is a partner in the firm having a share of one-half in the profits thereof, has other personal income of Rs. 6,000 from interest on securities. He is

of the shareholder or partner; but it is so included—section 16; and (b) the shareholder or partner could in no circumstances be [illegible] but under section 14 (2) he is [illegible] pens that the company or firm [illegible] such income from dividends [illegible] of the heads in section 6. Income from dividends should evidently be regarded in the hands of the shareholder as income from "Other sources," while income from a firm should be regarded in the hands of the partner as income from "Business". On the other hand the partner or shareholder is not an "assessee" in respect of such income unless the firm or company has not been assessed.

73. *New business.*—As stated in paragraph 14, assessments under the Act are made on the profits of the "previous year". [illegible] as a [illegible] year [illegible] xception is that referred to in the next paragraph.

74. *Businesses closing down* —The only exception to the general rule that assessments are made on the profits of the previous year is contained in section 25 (*1*) where, in order to guard against a possible loss of revenue owing to delay in making assessments on the profits of businesses, professions or vocations that close down during the course of a financial or commercial year, it is provided that in such cases in addition to the assessment on the income of the preceding year a further assessment may be made in the year in which a business, profession or vocation is closed down, on the income of t[illegible] section (2) of that section imposes a statutory ob[illegible] ess, profession or vocation [illegible] hin 15 days of the discontinuance.

It is to be noted that these provisions apply only to businesses, professions or vocations, that is to say, to profits or gains taxable under sections 10 and 11, and further, that they only apply to any business, profession or vocation on which income-tax was not at any time charged under the provisions of the Indian Income-tax Act, 1918. They do not apply to any business, profession or vocation on which income-tax had been charged under the provisions of that Act, as these are subject to the special provisions of section 25 (*3*) which are described below.

The power to make this additional assessment under section 25 (*1*) is a *discretionary* power which may be exercised whether the business, etc., is a purely temporary business commencing and closing down in the same year, or whether it is a business that has been in existence and has been previously taxed under the present Act. It should only be used in cases where there is reason to anticipate that the tax may not be collected unless the assessment is made in the year in which the business, etc , closes down Where there is reason to believe that there will be no difficulty in making the assessment and collecting the tax in the usual manner, that is,

Where a business, profession or vocation is completely discontinued *and is not merely transferred from* one proprietor or set of proprietors to another, the person who carried on the discontinued business is responsible for the payment of the tax, and where the proprietorship was vested in a firm, section 44 specifically provides that the persons who were members of the firm on the date of such discontinuance, are *jointly and severally liable to any tax* due from the firm

75. *Change in the constitution of a firm.* [*Section 26 (1)*]—As amended by Income-tax Amendment Act III of 1928, section 26 now consists of two parts, the first part dealing with changes in *the constitution of a firm and* the second part with changes in the ownership of a business, profession or vocation Under section 26 (1) the assessment on the firm and on the members thereof shall, subject to the provisions of this Act, be made as if the firm had been constituted throughout the previous year as it is constituted at the *time of making the assessment and as if each member had* received the share of the profits of the year proportionate to his interest in the firm at the time of making the assessment. For example, if 'A' happens to be a member of a firm when an assessment is made in the year 1922-23, even if 'A' has newly succeeded to the partnership just before the assessment is made, he is deemed, for the purposes of both income-tax and super-tax, to have received out of the profits of the year 1921-22 (which are the profits assessable in the year 1922-23) the share to which he would have been entitled had his share in the firm been the same as it was in 1922-23 when the assessment was made.

75-A. *Succession.* [*Section 26 (2)*]—This sub-section applies only to cases in which a business, profession or vocation has changed hands. This sub-section incorporates the decision of the Privy Council in the Western India Turf Club case The assessment should be made *on the successor* as though he had been carrying on the business, profession or vocation throughout the previous year and as if he had received the whole of the profits for the year. The rate of tax payable will depend on the status of the successor and not on that of the predecessor

If two or more firms amalgamate and are taken over by a new company, or if a company already in existence takes over one or more firms any loss of one firm can be set off against the profits of another firm or of the company or *vice versâ* in taxing the company in the first year after the succession A single assessment *should be made on the successor in respect of the profits of* all his predecessors and of himself, if he existed in the previous year, taken together.

Where a concern splits up into two or more concerns, each of the latter should be assessed on the profits in the previous year of the corresponding part of the original business in the manner appropriate to its status (*i e*, whether it is a firm or a company, etc) when the assessment is made Where a person disposes of

venience to assessees, the assessment both of income-tax and super-tax should be made simultaneously.

78. *Appeals to Assistant Commissioner.*—The cases in which an appeal may lie to an Assistant Commissioner against the orders of an Income-tax Officer are specified in detail in section 30 As stated in paragraph 67, it is necessary that every effort should be *made to get tax-payers to file* returns of income and the restrictions on appeals contained in the proviso to section 30 (*1*), which definitely forbid the entertainment of any appeal against an assessment where the Income-tax Officer has been compelled to make the assessment under section 23 (*4*) [*i.e.*, in cases where an assessee has failed to make a return or has failed to produce his accounts when called for or has failed to produce any proof of the accuracy of his returns], should be rigidly adhered to. Under no circumstances may any appeal be entertained in those cases.

Section 30 now allows appeals to the Assistant Commissioner against the refusal of an Income-tax Officer to re-open a case under section 27 and also against the orders of an Income-tax Officer imposing a penalty under section 25 (2) or section 28.

When an Income-tax Officer has refused to register a firm, no appeal lies to the Assistant Commissioner of Income-tax under section 30 of the Act against non-registration, whether from the firm itself or from any partner who regards himself as aggrieved; similarly, no partner in a firm is entitled to appeal under that section ag [illegible]
be taken [illegible]
the firm [illegible]
against a [illegible]
ment, and the decision that a firm is or is not entitled to registration is not reached in those proceedings but in separate proceedings under section 26A.

Commissioners of Income-tax have power under section 33 to interfere with an Income-tax Officer's order registering a firm or refusing registration. Any party dissatisfied with any order of an Income-tax Officer passed under section 26A, may therefore apply to the Commissioner of Income-tax to review such order under section 33.

Where the determination of the precise amount of loss sustained by an assessee in a particular year is material, for example, where the assessee is a firm and the amount of loss sustained by the firm affects the assessments of the partners, or where the amount of depreciation that can be carried forward is affected, an appeal should be admitted under section 30 against the Income-tax Officer's decision as to the amount of loss unless, of course, the case has been decided under section 23 (4).

The form in which an appeal must be presented to the Assistant Commissioner is specified in rule 21 and that form must also be verified in the method prescribed in the same rule. Any false statement in the said verification is punishable under section 52.

assessee's income from any source that did not escape assessment at the original assessment.

80. *Appeals to Commissioner*.—No second appeal lies from orders passed by an Income-tax Officer. One appeal is allowed to the Assistant Commissioner under section 30 The only cases in which an appeal may be made to the Commissioner are against special orders passed by an Assistant Commissioner himself, *viz.*, an order imposing a penalty under section 28 or an order enhancing an assessment in the course of an appeal No appeal lies to the Commissioner in any other case

81. *Commissioner's power of revision* (*Section 33*).—The period within which an Income-tax Officer may assess income that has escaped assessment is restricted by section 34 and the time within which an Income-tax Officer, Assistant Commissioner or Commissioner of Income-tax may correct a mistake apparent on the face of the record by section 35 The Commissioner acting under section 33 cannot extend this period of limitation though he can revise, after it has expired, action validly taken within it. If a Commissioner of Income-tax desires to exercise his power of revision in any case where more than a year has elapsed since the passing of the last order by the subordinate authority he should not do so without first consulting the Central Board of Revenue.

Where in consequence of any appellate or revisional order, or any decision of a High Court on a reference, the assessment of a firm is modified in a manner entitling any partner to a reduction of the tax imposed on him individually, and for any reason such relief cannot be given by the Assistant Commissioner in the exercise of his appellate powers, the Commissioner of Income-tax should make the reduction under section 33 regardless of the period of one year mentioned above.

The Commissioner need not make a personal enquiry, if any enquiry is necessary, before exercising his powers of revision. He may cause an enquiry to be made by a subordinate officer.

The power conferred by this section on a Commissioner can only be exercised once in any particular case A Commissioner who has once "declined to interfere" under this section is debarred from subsequent action under that section just as he would be if he had passed an order modifying the assessment.

An order under section 33 merely declining to interfere is not an order "prejudicial to the assessee" A Commissioner is therefore not bound to hear an assessee or his representative before rejecting a revision petition. The Act, of course, does not contemplate such petitions.

The decision of a Board of Referees under section 33-A is not subject to appeal to any Income-tax authority and cannot be revised by the Commissioner in exercise of his powers under section 33.

81-A. *Reference to Board of Referees*. (*Section 33-A*).—No time is prescribed in sub-section 3 of section 33-A within which

If it appears at any stage of the proceedings that no income has escaped assessment or been assessed at too low a rate, the Income-tax Officer must promptly stop the proceedings It is not intended that when a man has concealed part of his income and the Income-tax Officer is proceeding to assess the income that has escaped taxation, the assessee should be entitled to have an assessment that has already become final re-opened. Still less is it intended that the Income-tax Officer should be invested with wide powers of revision or review merely because he has formed a mistaken impression that certain income has escaped assessment or been assessed at too low a rate His powers under section 34 can never be used, therefore, to effect a reduction of tax already levied

When income that escaped assessment or was assessed at too low a rate is subsequently assessed or fully assessed, the proviso to section 34 makes it clear that the rate applicable to such assessment or re-assessment is the rate in force at the time when the income should originally have been so assessed

As regards appeal against an assessment under section 34 please see last sub-paragraph of paragraph 79

83. *Rectification of mistakes in assessments* (*Section 35*) — The power conferred upon the Commissioner or Assistant Commissioner of Income-tax or the Income-tax Officer by section 35 to rectify a mistake, whether on his own motion or on the application of an assessee, is confined to the rectification of mistakes patent from the facts or documents which were before him when he passed his revisional, appellate or original assessment order, as the case may be This section does not confer on the Officers general power of review or authorise any assessee to introduce any new facts in connection with the said assessment An Income-tax Officer should not correct mistakes in cases that have been dealt with by the Assistant Commissioner on appeal or the Commissioner of Income-tax in revision without a reference to the Assistant Commissioner or the Commissioner of Income-tax as the case may be.

84. *Elimination of pies from assessment* —Section 36 provides that in income-tax assessments or refunds fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna This provision has been made for the purpose of eliminating fractions of an anna from the accounts

Income-tax Officers should also be instructed not to attempt to work out the Income-tax due on fractions of a rupee Fractions of a rupee in *income* should be entirely disregarded

85. *Income from properties or securities, etc , held under Trust* (*Sections 40 and 41*)—Where any "property" (in the widest sense, but excluding a business) is held under Trust, the owner of that property, for the purposes of the Income-tax Act, is the beneficiary and the income is the income of the beneficiary. The Act does not permit of double taxation in the case of Trusts, *viz.*, once in the hands of a trustee and again in the hands of a beneficiary Under these sections, the guardians, trustees, agents,

firm. Its inclusion in his total income may raise the rate of tax leviable on the remaining income of a beneficiary or render that income liable to super-tax The Trust income in the hands of the beneficiary should not *itself* be subjected to super-tax a second time, if it has borne super-tax in the hands of the Trustees, though legally it is liable to be so subjected

If such a business is conducted by a single Trustee, the same principles will be applied.

86. *Non-residents. Income other than from business.*—Under section 4 (*1*) tax is payable in respect of all income, profits or gains accruing or arising in British India or deemed under the provisions of the Act to accrue or arise or to be received in British India, whether the recipient resides in British India or not There is little difficulty regarding income arising in British India and receivable by non-residents under the heads "salaries," "interest on securities," "property," "professional earnings," or "other sources" In cases of income from "interest on securities" and "salaries" income-tax is deducted at the source, and in the case of income under the other heads a non-resident is usually represented by an agent [section 42 (*1*)] No difficulty has been experienced in determining whether income under any of those heads is taxable

87. *Non-residents Income arising from business in India* — There is no precise definition in the Act which can be used as a test for determining in every particular instance whether a non-resident is or is not carrying on business in British India and how the amount of taxable profits is to be arrived at Section 42 of the Act contains special provisions regarding non-residents, and rules 33 to 35 prescribe the manner in which and the procedure by which the income, profits and gains may be arrived at in the case of non-residents. Instances are given below of the method to be adopted in dealing with typical cases

(1) *Indian branches of non-resident firms* are liable to assessment under the Act. In order to secure an accurate assessment in such cases, sections 22 (*4*) and 37 enable an Income-tax Officer to require the production of the balance sheet and profit and loss account of the firm as a whole in addition to that of the Indian branch, and also to require the submission of a detailed statement of all the profits credited to the personal account of the head office on account of transactions carried out on its behalf In some instances, however, the form adopted for the accounts and balance sheets of the head office or the Indian branch does not enable the share of profits properly due to the Indian branch to be accurately gauged, while there are certain firms which keep no accounts at all either at their head office abroad or at their branch offices in India. Rule 33 gives Income-tax Officers wide powers to determine how the profits of the Indian branch shall in these circumstances be calculated and enables them to fix as the income of the Indian branch for assessment purposes either a percentage of the turn-over of the business done by the branch

the nature of a regular *agency* should exist in order to make the profits of a non-resident chargeable in the name of an agent. They are so chargeable even when the only connection between the non-resident and the person acting as his agent is that that person is ordinarily and regularly employed as an agent by the non-resident. The Government of India do not, however, desire that in practice the liability to assessment should be enforced except where something definitely of the nature of an agency exists and in particular no attempt should be made to tax the profits of a *consignment business pure and simple*, merely because the non-resident consignor habitually uses a particular resident as his agent.

In all cases it will be a question of fact whether the connection between the non-resident and the resident is such that an agency can be held to exist. "Agency" for the purposes of this section should be interpreted to mean a regular, not casual, agent and one whose relation to the non-resident principal is such that the principal may reasonably be held to be trading "in the country" and not merely "with the country". If, for example, there is no privity of contract between a foreign principal and a resident who purchases the foreign principal's products through another resident or if the resident vendor has to bear any bad debts arising out of such transactions, the resident vendor is not to be treated as the agent of the non-resident. Even if a non-resident does not bear bad debts, he will be considered to be trading in the country *(if there is privity of contract)* if the agent receives a *del credere* commission, *i.e.*, an additional commission in consideration of guaranteeing the non-resident against bad debts, or if the rate of commission is so unusually high as evidently to be intended to include a *del credere* commission though none is specifically mentioned. It is doubtful whether it is practicable to formulate for the guidance of Income-tax Officers any more definite principles than those stated above; but the following examples may serve to indicate the lines on which decisions should be reached —

(*a*) B, a distiller in Glasgow, has agreed to sell to no one in India except A, his Agent, provided that A gives B all or an agreed proportion of his trade. A purchases from B and sells to the trade at his own rates, and all bad debts are A's. No attempt should be made to tax B on his profits. His position, in spite of his supplementary agreement with A, is merely that of a seller to an Indian consignee who takes the risks or profits of the trade in India.

(*b*) A, an Indian resident and a large supplier of mill stores, has a monopoly for the sale in India of the belting of a non-resident B. A is paid commission by B on all orders he sends either for his own stock or risk or in execution of orders obtained. He does not confine his purchases of belting to B. He stands all loss from bad debts and fixes the prices to be asked for the goods. Here again the position of B is merely that of a seller

manufacturing profits as well as on the merchanting profits—while a foreign head office is not allowed to charge a notional commission to its branch or agency in British India on goods exported to the branch or agency and sold by it in British India

If it is desired to assess a non-resident who has no resident agent through whom such assessment can be made, and whose entire income also cannot be taxed at source or indirectly, a notice under section 22 (2) should be served upon him as early as possible in the year by registered post (acknowledgment due) allowing plenty of time for the return to be made If he then fails to make a return, or to comply with subsequent notices calling for the production of accounts, etc., (in which also ample time should be allowed for compliance), an assessment may be made under section 23 (4). When serving such notices on a non-resident, he should be invited in a covering letter to appoint an agent to represent him for income-tax purposes in India.

A person whom the Income-tax Officer has decided, after due notice and hearing under section 43, to treat as the agent of a non-resident, is not entitled to appeal to the Assistant Commissioner against the Income-tax Officer's order until an assessment has been made. But it is open to such person to petition to the Commissioner of Income-tax against the Income-tax Officer's order before an assessment is made; and Commissioners of Income-tax are authorised to dispose of such petitions under section 33 of the Act

Non-residents whose income arises in more than one province, [illegible]
a [illegible]
S [illegible]
I [illegible]
c [illegible]
S [illegible]

Non-residents whose income arises in a single province, and who are assessed direct, and not through statutory agents under Section 43 of the Act, will be assessed by a special Income-tax Officer appointed by the Commissioner of Income-tax in each province. When he starts assessment proceedings, the special Income-tax Officer should inform the non-resident that if he is entitled to any refund, he should fill in the necessary forms and present his claim to the Income-tax Officer, Non-residents Refund Circle. At the same time, the Income-tax Officer should inform the Income-tax Officer, Non-residents Refund Circle, that he has started assessment proceedings against the person concerned, and that the amount of any refund due should be communicated to him for adjustment against the tax due from the non-resident. If the assessee does not apply for any refund, the special Income-tax Officer should assess him without allowing any adjustment and recover the tax If the assessee applies for a refund subsequently, the Non-residents Refund Circle should consult the special Income-tax Officer and should not make the refund unless the tax due has already been paid in full.

the *whole* business, Indian and foreign, and furnishes the accounts of gross receipts, Indian and foreign.

Some lines do not furnish complete annual accounts for their world business. They keep separate complete annual accounts for their Indian trade—that is, for all "round voyages" to and from Indian ports. The proper course is then to apply the method just described treating the profits of the Indian trade and the gross receipts of the Indian trade as though they were the "world-profits" and the "world receipts" respectively In fact the business other than the Indian trade is ignored.

A difficulty sometimes arises in such cases owing to the fact that the ships employed in the Indian trade are constantly being changed Unless United Kingdom depreciation is accepted as indicated above a depreciation record will have to be kept for every ship employed at any time in the Indian trade Depreciation must be allowed on each ship employed in the Indian trade in a given year and the allowance must be a proportion of the annual rate calculated with reference to the number of days spent in the Indian trade whether at sea or in harbour Any unabsorbed depreciation in any year must be distributed among the ships in the Indian trade in that year in proportion to the capital cost of each, and the unabsorbed depreciation thus allotted to any ship can only be allowed in any subsequent year against the *same ship*

The allowance should cease —

(*a*) on ships included in the fleet in the first year in which the Company becomes *liable* to assessment in India (irrespective of whether it was actually found to have a taxable income in that year or not), after the twentieth year beginning with that year,

(*b*) on ships subsequently added to the Company's fleet, after they have been borne on the fleet for 20 years

In both cases the period may be extended proportionately, where the United Kingdom depreciation is allowed in calculating the "profits of the Indian trade" which take the place as already explained of the "world-profits".

Obsolescence cannot be allowed in these cases

89. *British Shipping Companies—Assessment of* —When assessing British Shipping Companies, the Income-tax Officers should accept a certificate granted by the Chief Inspector of Taxes in the United Kingdom stating (1) the ratio of the profits of any accounting period as computed for the purposes of the United Kingdom income-tax computed without making any allowance for wear and tear to the gross earnings of the Company's whole fleet and the ratio of the United Kingdom allowance for wear and tear to the gross earnings of the whole fleet, or (2) the fact that there were no such profits The expression 'gross earnings of the Company's whole fleet' means the total receipts of the Shipping Company, excepting only receipts from non-trading sources, such as income from investments. The following instructions should be

an agent from whom the tax would be recoverable under section 42. Where there is no charterer the owner will be the principal Where there is a charterer it will be a question of fact whether he or the owner is the principal. The business of which the profits are to be calculated and assessed for income-tax under Chapter V-A is the business of carrying passengers, live-stock or goods shipped at ports in British India, and the person to be taxed is the person (referred to in Chapter V-A as the 'principal') who carries on that business, but does not reside in British India, and does not employ any agent from whom the tax would be recoverable under section 42 The criterion to be applied is, "who is the person to whom or on whose behalf money is paid or payable on account of carriage of passengers, live-stock or goods from a port in British India?"

Generally speaking, where there is what is known as a 'Time Charter,' under which the owners may be said to let the ship out to the charterer for a fixed sum for a certain period, during which the owners retain no further control over the vessel or her movements, the owners cannot be held to be carrying on business in British India, or even to have a 'business connection' in British India, and are therefore not liable to Indian income-tax either under Chapter V-A or under section 42

Where, however, the ship has been chartered under what is known as a 'Voyage' or 'Trip' Charter the position is different. Under this kind of Charter party, the charterers are practically in the position of brokers, who guarantee to secure a certain quantity of cargo for the owners at certain rates of freight If the full amount of freight cannot be secured, the charterers are liable to make good the deficiency Any such deficiency is to be paid by the charterers to the Master, on behalf of the owners, in cash, *minus* a certain percentage, at the time and place of loading in India Similarly, if freight is secured in excess of that stipulated, the Master of the ship is to pay such excess to the Charterers, at the time and place of loading, by demand draft on the owners on London. The Bills of Lading are signed by the Master on behalf of the owners, and the cargo as soon as shipped is therefore in the constructive possession of the owners, and at their risk. The ship is usually consigned to the Charterers *or their agents*, who look after its interests when in port, and for doing so are paid a commission by the owners The owners also pay brokerage In such a case, the owners are carrying on business in British India through their agent the Master, who receives cargo on their behalf, and receives and makes payments on their account in British India, and thus the owners having no *regular* or permanent agent in British India are liable to tax under Chapter V-A on the profits of the business conducted by the Master on their behalf

If a ship has arrived in a British Indian port, either on owner's account or under a charter and the non-resident owner, or the non-resident charterer, causes the ship to be chartered, or transfers the existing charter, or effects a sub-charter of the vessel, as the case may be, such a transaction, though it does constitute the

and, in the areas in which a special staff is employed where the powers for the recovery of municipal taxes or local rates have proved insufficient, the Income-tax Officer may, under section 46 (2), forward under his signature a certificate specifying the amount of arrears due from an assessee to the Collector of the district, and the Collector of the district on receipt of such a certificate must proceed to recover the amount specified in the certificate as if it were an arrear of land revenue.

Where the defaulter is a salaried person the Income-tax Officer may, under the provisions of section 46 (5), require the person paying "salary" to such assessee to deduct from any subsequent payments of "salary" any arrears of tax due from such assessee whether those arrears are due on account of tax on 'salary' or on income from any other sources or on account of any penalty

The necessity for prompt collection of the tax should be impressed upon Income-tax Officers since not only is delay in the collection of this tax likely to result in loss of revenue for other reasons, but, under the provisions of section 46 (7), no proceedings for recovery can be commenced after the expiration of one year from the last day of the year in which the demand is made, with the exception of the special case referred to in sub-section (1) of section 42 That sub-section refers specially to arrears of tax due from a non-resident For the collection of such arrears no time limit is prescribed as such arrears may be recovered from any assets of the non-resident which may *at any time* come within British India

The phrase "proceedings for the recovery of any sum payable under this Act" should be interpreted as relating to proceedings taken under section 46 The issue of a notice of demand is not a proceeding for the purpose of this section.

The above remarks regarding recovery of tax apply also, under the provisions of section 47 to the recovery of any penalty imposed under section 25 (2), section 28 or sub-section (1) and (1-A) of section 46

92. *Refunds of Income-tax* (*Section 48*) —Refunds are necessitated owing to the system of taxation at the source, which occurs in the case of the tax on companies and on registered firms [section 48 (1) and (2)], and of deduction at the source, which occurs in the case of "interest on securities" and "salaries" [section 48 (3)]. In both these cases the rate of tax appropriate to the "total income" of the recipient (the shareholder, partner, security-holder or salaried person) is not known at the time that the tax is assessed or deducted. As stated in paragraph 61, in order to simplify the procedure in connection with refunds section 18 (9) makes it obligatory upon the person deducting income-tax from "interest on securities" to issue to all security-holders a certificate specifying the amount of the tax deducted from the interest and the rate at which it has be[illegible]
63) requires t[illegible]
dends to issue [illegible]

through the Political Officer in that State, that is to say, the refund voucher that will be issued by the Income-tax Officer will be made payable, if the person applying for the refund so desire, at the Political Treasury of the Government of India in the particular Indian State, or if there is no treasury under the control of the Political Officer, at the prescribed British Indian Treasury.

The necessity for refunds of tax on Government securities can be avoided, by the procedure laid down in paragraph 61, in the case of persons who are either not liable to the tax or who have a taxable income which is sufficiently stable to justify the Income-tax Officer in assuming that the rate applicable to the total income is not likely to move from one grade to another Again, as has been pointed out in preceding paragraphs, the necessity for a refund can also be avoided in the case of persons who have income which has not been taxed, or from which income-tax has not been deducted, at the source, since such persons can claim a set-off against the tax due on that other income

In cases where a cash refund is necessary, the procedure laid down in rules 36 to 39 should facilitate the granting of refunds. The application must be made in the form prescribed in rule 36 by persons resident in British India and in that prescribed in rule 36-A by persons not resident in British India and verified in the manner laid down in those rules and must, under rule 37 or 37-A, be accompanied by a return of the "total income" in the form prescribed in rule 19 unless such a return has previously been made or that prescribed in rule 37-A as the case may be A false statement in such a return or in such a verification is punishable under the provisions of section 182 of the Indian Penal Code, which are set out in paragraph 68 above The application must also, where necessary, be accompanied by the certificates mentioned in section 18 *(9)* or section 20 The applications, under rule 40, need not be presented in person, but may be sent by post or by an authorised agent.

Where the applicants reside in India, instead of issuing a refund order payable at a treasury or a branch of the Imperial Bank of India, the amount of refund due may be remitted by money order if the Income-tax Officer concerned is satisfied that this course is more convenient In that event, the cost of the money order will be borne by Government and should not be deducted from the amount to be refunded If the applicants reside out of India, the amount of refund under section 48 or 49 of the Act will be remitted to them by bank draft or money order at their cost unless they appoint agents to receive payment in India

It should be particularly noted that section 48 does not apply to super-tax (see section 58) since super-tax is not deducted at the source or taxed at the source with the solitary exception of the case referred to in section 57, in which case no claim for any refund can arise.

Under sub-sections *(4)* and *(5)* of this section refunds to non-residents, who are neither British subjects nor subjects of Indian

paid or payable by him on that part of his income at a rate thereon to be determined as follows:—

(a) if the Dominion rate of tax does not exceed one-half of the appropriate rate of United Kingdom tax, the rate at which relief is to be given shall be Dominion rate of tax;

(b) in any other case the rate at which relief is to be given shall be one-half of the appropriate rate of the United Kingdom tax

[illegible]

pression "the appropriate rate of United Kingdom tax" means a rate equal to the sum of the rates at which he has borne or is liable to bear United Kingdom income-tax and super-tax, respectively, for that year

(2) Where a person has not established his claim to relief under this section for any year of assessment before the first day of January in that year, the relief shall be granted by way of repayment of tax

(3) Where by reason of the allowance of relief under this section the rate of *United Kingdom income-tax deducted from or paid in respect of any part* of the income of any individual is less than the standard rate and the rate of the relief so allowed is greater than the rate appropriate to the case of that individual, such an adjustment shall be made in allowing to that individual any relief to which he may be entitled under the provisions of this part of th[illegible] Act relat[illegible] to the rate of tax on the first two hundred and twenty-[illegible] be necessary to secure that the amount [illegible] paid or borne by him shall be equal [illegible] paid or borne if the relief under this section had in the first instance been given at the rate appropriate to his case

(4) Notwithstanding anything in the Rules applicable to Case IV or Case V of Schedule D or in any other provision of the Income-tax Acts, no deduction shall be made on account of the payment of Dominion income-tax in estimating income for the purposes of United Kingdom income-tax, and where income-tax has been paid or is payable in any Dominion either on the income out of which income subject to United Kingdom income-tax arises or is received, or as a direct charge in respect of that income, the income so subject to United Kingdom income-tax shall be deemed to be income [illegible] of Dom[illegible] income-tax and an addition [illegible]

Provided that—

(a) where any income arising or received as aforesaid consists of dividends which are entrusted to any person in the United Kingdom for payment and the Special Commissioners are satisfied that the person so entrusted is not in a position to ascertain the amount of the addition to be made under this sub section, the assessment and charge may be made on the amount of the dividends as received by the person so entrusted, but in any such case the amount of the addition shall be chargeable on the *recipient of the dividends* under Case VI of Schedule D, and

(b) where under the laws in force in any Dominion no provision is made for the allowance of relief from Dominion income-tax in respect of the payment of United Kingdom income-tax, then in assessing or charging income-tax in the United Kingdom in respect of income assessed or charged to income-tax in that

For the purposes of this section, the rate of United Kingdom income-tax

* * * * * * *

Under that section a person whose income is assessed both in the United Kingdom and in India is entitled to claim from the authorities of the United Kingdom a refund or rebate of the rate levied in India up to one-half of the English rate.

Section 49 of the Indian Income-tax Act, therefore, provides that where any further relief is to be given in order to secure that such a person shall not pay a higher rate than the highest rate in either country, such relief will be given by India, subject to the limitation that the relief given in India shall not exceed half of the rate of income-tax and super-tax combined Up to the year 1921-22 the *Indian rates of income-tax and super-tax combined* were less than half the rates in the United Kingdom, and, therefore, no claim can be made under this section in respect of tax levied up to that year Relief can only be claimed in India, when, owing to any alteration in the rates, the Indian rate is more than half the English rate, and the amount of relief would merely be the amount by which the Indian rate exceeds half the English rate. The rates prescribed in India in most cases now amount to more than half the English rates as fixed for the year 1932-33 The table below shows the amount of English income-tax and super-tax and the effective rate per rupee contrasted with similar figures for the Indian rates.

English				Indian		
Income	Income-tax	Super-tax	Effective rate *per rupee*	Income-tax	Super tax	Effective rate *per rupee*
Rs	Rs	Rs A	Rs A P	Rs A	Rs A	Rs A P.
25,000	6,250	.	0 4 0	3,002 7		0 1 11¼
30,000	7,500	183 5	0 4 1¼	4,492 3		0 2 4¼
45,000	11,250	1,375 5	0 4 6¼	7,324 4	878 15	0 2 11
60,000	15,000	3,392 0	0 4 10¼	9,765 10	2,148 7	0 3 2¼
75,000	18,750	6,096 0	0 5 2¼	12,207 1	3,613 5	0 3 4¼
90,000	22,500	9,258 11	0 5 7¼	14 648 7	5,078 2	0 3 6¼
1,05,000	26,250	12,558 11	0 5 10¾	17,773 7	6,739 5	0 3 8¼
1,20,000	30,000	16,592 0	0 6 2¼	20,312 8	8,789 1	0 3 10¼
1,35,000	33,750	20,762 11	0 6 5¾	22 851 9	10,839 14	0 3 11¾
1 50,000	37,500	25,300 0	0 6 8¼	25,390 10	12,890 10	0 4 1
2 25,000	56,250	48,675 5	0 7 5	38,096 0	27,050 11	0 4 7
3 00 000	75 000	74,342 0	0 7 11	50,731 5	45,117 3	0 5 1
4,50 000	1,12,500	1,29 342 0	0 8 7	76,171 15	94,021 14	0 6 1
6,00,000	1,50,000	1,87,092 0	0 8 11	1,01,562 11	1,62,304 11	0 7 0¼
Companies	..		0 4 0			0 3 11¼

NOTE—The allowances and abatements allowed by the United Kingdom Income tax Act have not been taken into account in working out the figures of United Kingdom income-tax in the table. The income tax and surtax have also been assumed to be charged on the same income The figures are therefore only useful as generally indicating the relative rates of taxation in the two countries.

Empire, and further that the settlement should be independent of increases and decreases in rate of tax and alteration in the basis of assessment whether in the United Kingdom or in the Dominions This intention is clearly illustrated by the following examples which are given in the report.

Exam[illegible] A [illegible] directly [illegible] in the £ [illegible] varies ac[illegible] trate the position —

—		United Kingdom.	Dominion.
	1st year.		
Tax before relief		£1,000 at 3*s* 9*d*.	£600 at 1*s*. 6*d*
Relief		£1,000 at 1*s* 6*d*.	*Nil*
Tax after relief		£1,000 at 2*s* 3*d*.	£600 at 1*s*. 6*d*
	2nd year.		
Tax before relief		£300 at 3*s* 6*d*	£900 at 1*s*. 6*d*
Relief		£300 at 1*s* 0*d*.	*Nil*
Tax after relief		£300 at 1*s* 6*d*	£900 at 1*s* 6*d*

In this example, although it was the same description of income assessed each year, [illegible] in the United Kingdom [illegible] g to different methods of [illegible] e intentionally exaggerated to illustrate the principles to be followed

Example 2.—B is a British resident receiving as shareholder an income of £900 from a British Company C which derives the whole of its income from a Dominion In the first place relief will be given to the Company C, and in order to illustrate how this is done, let it be assumed that the Company's *profits as calculated for the United Kingdom tax* are £60,000, and as calculated for Dominion tax £50,000 Adjustment will be made to the Company as follows.—

—	United Kingdom	Dominion
Tax before relief	£60,000 at 6*s* 0*d*	£50,000 at 1*s* 6*d*.
Relief	£60,000 at 1*s*. 6*d*.	*Nil*
Tax after relief	£60,000 at 4*s* 6*d*	£50,000 at 1*s* 6*d*.

The following are further examples illustrating the method to be adopted in calculating relief due under section 49 of the Act:—

Example 1—A, a married man with one child, is resident in the United Kingdom; he has a fixed income of Rs 10,500 from property in India and has no other income, his liability to tax is —

In the United Kingdom		Rs. A. P.	In India
Assessable income		10,500 0 0	Income-tax on Rs 10,500 at 1 anna 3 pies in the rupee, Rs. 820-5 0.
	Rs		
Less Personal allowance .	2,000		
Deduction for child . .	667		
		2,667 0 0	
Taxable income		7,833 0 0	
Tax on the 1st Rs. 2,333 at As 2 in the rupee		291 10 0	
Tax on balance Rs 5,500 at As 4 in the rupee		1,375 0 0	
* Total tax (before relief in respect of Indian income-tax)		1,666 10 0	

* For the purposes of calculating ' the appropriate rate of United Kingdom tax " this amount is not to be reduced by any relief granted in respect of any life assurance premium

The United Kingdom tax (Rs. 1,666-10-0), divided by the taxable income (Rs 7,833) gives an " appropriate rate of United Kingdom tax " of approximately 3 annas 5 pies A has paid Indian income-tax in respect of the same income at a rate of 1 anna 3 pies in the rupee, that is, a rate which is less than half the United Kingdom rate and the relief from United Kingdom tax will, therefore, be a sum equal to the Indian rate on Rs 7,833

Example 2—B is a bachelor resident in the United Kingdom with no dependents and has an earned income of £1,000 assessable to United Kingdom income-tax He has no other income and pays income-tax in India in respect of the income in question His liability to tax is as follows —

—	United Kingdom. £ s. d.
Total income	1,000 0 0
Less earned income allowance one-sixth of £1,000 . . .	166 13 4
Assessable income	833 6 8
Less Personal allowance , ...	100 0 0
Taxable income	733 6 8
Tax on 1st £175 at 2s 6d.	21 17 6
Tax on balance £421 at 4s 6d	139 10 0
* Total tax (before relief in respect of Indian income tax)	161 7 6

* For the purposes of calculating " the appropriate rate of United Kingdom tax " this amount is not to be reduced by any relief granted in respect of life assurance premium.

i.e., there can at most be only two slabs There can be no part liable to income-tax alone since no income is exempt from super-tax alone The whole or a part of the income will, of course, be liable to super-tax alone if the whole or any part of the income is exempt from income-tax but not from super-tax The relief should be calculated separately on each of the two slabs just mentioned

This method is that followed by Somerset House

94. *Relief from double tax of incomes taxed in British India and in the United Kingdom—Procedure*—The following procedure should be followed for the grant of relief in respect of double taxation in India and in the United Kingdom —

When during an assessment it is known that an assessee will be entitled to relief on account of double taxation on any part of his income, the amount of the relief may be calculated by the Income-tax Officer so far as is possible, and the assessee may be allowed to pay the demand in two instalments, the second of which will represent the amount of relief calculated to be due The date of the first instalment will be that ordinarily fixed for the payment of a demand of income-tax, while the second will be payable two or, if possible, three or four months from the date of the notice of demand If the assessee produces the necessary British certificates and establishes his claim to relief under section 49 of the Indian Income-tax Act, 1922, the demand for the second instalment should be modified by cancellation or reduction or, if the relief is greater than the second instalment and the first instalment has been paid, a refund should be granted.

95. *Relief from double tax of incomes taxed in British India and in Indian States.*—Arrangements have also been made with several Indian States, which levy income-tax, for the grant of relief from the payment of double income-tax of incomes which are taxed both in any of these Indian States and in British India. Relief is granted in British India at a rate equal to half the Indian State rate subject to a maximum of half the British Indian rate, The State will grant relief at a rate equal to half its rate of tax The following is a copy of the Notification prescribing the procedure to be followed by persons claiming relief from the payment of double income-tax :—

FINANCE DEPARTMENT (CENTRAL REVENUES).

Notification No 25, dated the 1st July 1926 (as subsequently amended)

In exercise of the powers conferred by section 60 of the Indian Income-tax Act, 1922 (XI of 1922), the Governor General in Council is pleased to make the following modifications in respect of income-tax, in favour of income on which income-tax has been charged both in British India and in one of the Indian States

now pray for relief at the rate of amounting to Rs. under Notification No. 25, dated the 1st July 1926, to which I am entitled. My income from all sources to which this Notification applies during the "previous year" ending on the 19 , amounted to Rs only—see Return of income attached/already submitted

Signature

I hereby declare that what is stated herein is correct

Signature

Dated 19 .

4. No claim to any refund of Indian income-tax under this Notification shall be allowed unless it is made within one year from the last day of the year in which such tax or the State income-tax was recovered, whichever is later

SCHEDULE

1 Baroda.

Madras States Agency

2 Travancore.

Central India Agency.

3. Dhar.

Punjab States Agency

4. Patiala
5. Bahawalpur.
6. Jind.
7. Kapurthala.
8 Loharu
8-A. Maler Kotla
8-B. Mandi

Bombay.

9. Sachin.
10. Akalkot.
11 Phaltan.
11-A Chhota Udepur.
11-B. Ramdurg.
11-C Kolhapur.

United Provinces

12 Benares

Central Provinces

13 Baster
14 Kanker
15 Raigarh
16 Jashpur.
17 Sarangarh
18 Makrai
19 Kawardha.
20 Khairagarh
21 Korea.
22 Nandgaon
23 Chhuikhadan

Bihar and Orissa.

24 Mayurbhanj
24-A Patna
24-B Sonpur
24-C Kalahandi.
24-D Rairakhol.
24-E Baudh.

Punjab.

25. Baghat

(ii) if he has never been so resident, to the Income-tax Officer of the district or area where the income-tax for the refund of which application is made was deducted.

Such application may be presented by the applicant in person or by a duly authorised agent or may be sent by post, and shall be in the following form.—

Application for relief from double income-tax under Notification No , dated

I, of do hereby state that I have paid Ceylon tax amounting to Rs for the year ending 19 , on an income of Rs and that Indian income-tax/income-tax and super-tax of Rs has also been paid on the same income*/part of the same income amounting to Rs. . I now pray for relief of a sum of Rs under Notification No. , dated to which I am entitled. My income from all sources to which this Notification applies during the "previous year" ending on the 19 amounted to Rs. only—see Return of income attached/already submitted

Signature

I hereby declare that what is stated herein is correct.

Signature

Dated 19 .

(4) No claim to any refund of income-tax under this notification shall be allowed unless it is made within one year from the last day of the year in which such tax or the Ceylon tax was recovered whichever is later

95-B. *Limitation of claims for refund.* *(Section 50)*—Claims for refund are admissible if made within 12 months from the last day of the calendar year in which the tax was recovered *or* before the last day of the financial year commencing after the expiry of the "previous year" as defined in section 2 (11) of the Act in which the income arose on which the tax was recovered, whichever period may expire later. This limitation applies also to refunds of double income-tax (section 49). The date of recovery in this case is, of course, the date of recovery of the tax in India. Since however there is often very great delay in settling assessments and claims to relief in the United Kingdom, provisional claims for double income-tax relief unsupported by proof that relief has actually been obtained in the United Kingdom may be accepted if presented within the limitation period if the assessee definitely

* Where the income on which income-tax has been charged differs from that on which super-tax has been charged both amounts must be specified.

under the Act. The production before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 26-A, or the giving of evidence by a public servant in respect thereof is also not prohibited Proviso (c) was inserted mainly for the purpose of extending the protection to every action of a public servant in pursuance of the provisions of the Act or the rules such as the service of a notice by affixture. Apart from these particular cases it is essential that all records should be kept strictly confidential, and, in particular, the practice in certain provinces of furnishing information to local authorities, who impose a tax on "circumstances and property" or a local income-tax, of the details of assessment made by the income-tax authorities must cease This prohibition applies equally to furnishing such information to other Government departments

For the meaning of the phrase "public servant" see paragraph 9.

98. *Super-tax*—The provisions of the Act regarding income-tax other than those specially excepted in section 58 apply also to super-tax which is merely, as stated in section 55, "an additional duty of income-tax". Super-tax is levied at the rates specified in the Finance Act (at the end of Part I of this Manual)

The super-tax on companies is levied at a flat rate on the whole of the profits of a company This tax on companies, which takes the place of the tax formerly levied at a graded scale of rates on the "undistributed profits" of a company, is levied on the company as such on account of the special privileges which companies enjoy by statute in the shape of corporate finance and limited liability No refund on account of super-tax on companies is, therefore, allowed to shareholders.

Apart from the tax on companies which stands in a class by itself, super-tax is levied on a scale of graduated rates While in the case of income-tax the different rates are applied to the *whole* of an assessee's income, the different rates of super-tax are levied on successive "slices" of income, *i e*, on the portions of an assessee's income in excess of certain limits or the portions lying between certain limits.

Hindu undivided families are treated for purposes of super-tax, as for income-tax purposes, as separate assessees

Unregistered firms are also treated as separate assessees Where, however, an unregistered firm itself is not assessed to super-tax (*e g*, if its assessable profits are less than Rs. 30,000), in that case only is the income which any individual member of an unregistered firm receives from the firm included in his total income for super-tax.

Registered firms are not assessed to super-tax, but the shares of partners in registered firms are included in the total income of the individual partners on which super-tax is levied and similarly

bined amount of the two payments in any year and the income-tax thereon exceeds the minimum liable to super-tax though the first payment including the income-tax on it taken by itself does not exceed it, the principal officer is bound to deduct the super-tax on such excess from the second payment. The Act does not require the resident partner or the principal officer to obtain from the non-resident partner or shareholder a statement of any other income that may accrue to him in British India Where there is reason to believe that there is such other income it will be necessary to rely on the provisions of sections 42 and 43 of the Act or sub-section (2) of section 57. In the case of companies the obligation to deduct applies only to dividends, and does not apply to other sums which a non-resident may receive from the company by way of the interest on debentures or remuneration such as director's fees. If the non-resident is himself assessed through an agent, sub-section (4) provides that the amount deducted at the source in this manner shall be taken into account in determining the amount payable by him in respect of any other income

In the case of registered firms it should in most cases be possible to treat the person who registered the firm as the agent of the non-resident partner and to require him to disclose the whole income accruing in India to such non-resident

Another exception to the general rule that super-tax is not deducted at source is provided in section 58-H in respect of an employee's total income as determined under section 58-J (3)

100. *Super-tax—Deduction at source from dividends of non-resident shareholders* [*Section 57 (3)*] Sometimes large blocks of shares are registered in the names of banks, and held by them on behalf of the real owners for various reasons, though the banks have no proprietary or beneficial interest therein The aggregate dividends on a block of shares in a single company thus held by a bank may exceed the maximum amount exempt from super-tax, though the dividends payable to some or all of the real owners individually may not exceed that amount In such circumstances super-tax should not be deducted at source from the dividends payable to the bank irrespective of the liability of the several real owners of the shares. If, therefore, a bank in such circumstances furnishes the Income-tax Officer assessing the company from time to time with a list giving the names and addresses of the real owners of the shares and the number of shares held by each, the Income-tax Officer will inform the principal officer of the company, under sub-section (2) of section 57, of the rate of super-tax to be deducted in respect of the dividends payable to the bank, or that no super-tax is to be deducted therefrom, as the case may be, having regard to the liability of the individual shareholders

101. *Rules.*—Rules made under section 59 of the Act by the Central Board of Revenue are contained in Part II of this Volume With the exception of the rules first made under the Act, the power to make rules is, under section 59 (3), subject to the condition of "previous" publication". The meaning of the phrase

Section 63 (2) specially provides that in the case of firms or Hindu undivided families a notice or requisition may be addressed to any member of the firm or to the manager or any other male member of the family.

105. *The determination of the Income-tax Officer by whom an assessment is to be made.*—While for the reasons given in paragraph 24 every Income-tax Officer is, under section 64 (4), vested with all the powers conferred by or under the Act on an Income-tax Officer in respect of any income, profits or gains accruing or arising or received within the area for which he is appointed, the question of the Income-tax Officer by whom a particular assessee is to be assessed has to be determined in accordance with the provisions of sub-section (1) to (3) of section 64. Under those provisions, if an assessee carries on business, he has to be assessed by the Income-tax Officer of the area in which his principal place of business is situate, in all other cases an assessee has to be assessed by the Income-tax Officer of the area in which he resides. Where there is any doubt or dispute on any such question, the question is to be finally determined by the Commissioner of the province in which the areas are situate. Where the areas are situate in more than one province, the question is to be determined by the Commissioners of the provinces concerned in consultation, and where two Commissioners are not in agreement, the question will be determined by the Central Board of Revenue. In all cases of dispute, however, before any such question is determined, the assessee must be given an opportunity of representing his views.

If an assessee whom an Income-tax Officer is seeking to assess challenges his jurisdiction on the ground that the assessee's principal place of business or residence is in a different income-tax circle, the Income-tax Officer should at once report the case to the Commissioner for orders. Even if the Income-tax Officers of the various circles concerned are in agreement as to the proper place of assessment, they are not competent to decide finally where the assessment should be made unless the assessee acquiesces in their decision. If he disputes it and the alternative places of assessment are all in the same Province, the Commissioner of Income-tax of that Province can finally determine the place of assessment. If alternative places of assessment are not situated in the same Province, it is not necessary for the Commissioners to refer the case to the Central Board of Revenue, unless they hold different views.

It is not necessary for an assessee who disputes the jurisdiction of the Income-tax Officer either to move the Commissioner himself or to ask the Income-tax Officer to do so. Whatever the assessee does or proposes to do, therefore, the Income-tax Officer should take the Commissioner's orders at once whenever his jurisdiction is challenged.

As the question of jurisdiction must be decided before any assessment can be made, the Income-tax Officers and Commissioners

Where an Assistant Commissioner, hearing an appeal against an order purporting to have been made under sub-section (4) of section 23, dismisses the appeal on the ground that the assessment was rightly made under that sub-section and that therefore no appeal lies, the order dismissing the appeal is an order under section 31 within the meaning of sub-section (2) of section 66 and the assessee is therefore entitled to require the Commissioner to refer to the High Court any question of law arising out of such order.

The Commissioner retains the power to state a case to the High Court on his own motion or on a reference from any income-tax authority subordinate to him. No authority other than the Commissioner is authorised to state a case for the High Court.

The application for a reference must be made by the assessee within sixty days of the date on which he is served with notice of an order by an Assistant Commissioner under section 31, or by a Commissioner under section 32, or of a decision by a Board of Referees under section 33-A, and the reference to the High Court must be made by the Commissioner within sixty days of the receipt of the application

Under section 66-A, an appeal lies to the Privy Council from any judgment of the High Court delivered in a reference under section 66 if the High Court certifies that the case is a fit one for appeal.

106-A. *Computation of periods of limitation (Section 67-A)*—In computing the period of limitation prescribed for an appeal under *section 30 or 32* or for an application under *section 66*, the day on which the order complained of was made and the time requisite for obtaining a copy of such order shall be excluded The application or appeal must however be filed not later than the last day of the period of 30 or 60 days, as the case may be, so computed.

Under *section 21*, the return must be filed on or before the 30th April. Under *section 22 (2)*, if notice is received on May 1st, and the time specified in the notice is thirty days, the return must be made at least on May 31st. Cases under *section 66 (3)* are for the High Court to deal with

107. *Assessment of insurance companies.*—Under section 59 (2) (ii) special rules have been made prescribing the manner in which and the procedure by which, income, profits and gains shall be arrived at in the case of insurance companies. The rules so made are rules 25 to 32 while rule 35 deals with the particular case of non-resident companies.

Under these rules the income, profits and gains of *life* assurance companies incorporated in British India are determined by taking [illegible]osed by the last actuarial

[illegible]s made from the gross

[illegible]ion which are not admis-

[illegible] also any Indian income-

[illegible]erived from investments

before such income is received. If the *Indian income-tax* deducted

to the fact that the risks covered by the premium income in the year of assessment have not entirely ceased. With proper safeguards to prevent manipulation of the accounts, this estimate can equitably be made by treating sums placed by insurance companies carrying on these classes of business to their reserves for unexpired risks as expenditure incurred solely for the purpose of earning the profits of the business. And where, as not infrequently occurs, the reserve is divided into two parts of which the first is intended to cover normal unexpired risks and is generally reckoned at a fixed percentage of the premiums, and the second is intended to cover exceptional losses from widespread calamities, the rule allows this treatment to additions to both parts of the reserve. The safeguards against abuse which the rule imposes are as follows:—

(1) All sums on account of unexpired risks, which a company wishes to have treated as expenditure for income-tax

or super-tax purposes, must actually be credited to a Fund in the accounts of the company;

(2) They must also be specifically appropriated to meet liabilities under existing contracts; and

(3) The contracts must be with policy-holders

The only other fund established by insurance companies for which special provision is made in the rules (Rule 30) is the Investment Reserve Fund. Amounts actually credited by an insurance company of any kind in the ordinary accounts of its business for the accounting period to its Investment Reserve Fund for the purpose of meeting depreciation in the value of its securities can be treated as expenditure incurred for the purpose of earning the profits of the business in determining the taxable income of the insurance company in that year. The reasons for this departure from the general rule that reserves are not allowed as a business expense are as follows:—In the first place it may be noted that these adjustments are not optional, the company is required to make them in order to ensure that its assets are not overstated in the valuation. The transfer of sums by a Life Assurance Company to Investment Reserve Fund differs, moreover, essentially from the placing of amounts to reserve by a bank or ordinary commercial company, either for the purpose of extending its business, or for the provision of additional working capital: the sums thus placed to reserve are practically speaking composed of undistributed profits. There is also a substantial difference between this transaction on the part of an insurance company, and that by which a bank writes off the depreciation of the securities [illegible]

[illegible] tion. The latter course is usually adopted · but in both cases the depreciation is a loss, and to tax the amount of depreciation would [illegible] the loss to the company [illegible] is required to place to [illegible] quently the greater the tax it would have to pay.

On the other hand should the accounts show a credit for "appreciation" of assets, rule 30 provides for such appreciation being taxed. The words "as has been otherwise taken into account" in the latter portion of rule 30 mean "having been carried to the Life Assurance Fund or otherwise taken into account".

The reason for the use of the word "may" instead of "shall" in rules 27, 29 and 30 is that while the concessions conferred by these rules should be granted as a general practice the income-tax authorities retain a discretion to refuse them where the concessions have been abused.

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me-tax—*contd.*

* Not exempt from super-tax.

* Not exempt from super-tax.

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